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의학석사 학위논문

**Study on Confidential Birth and Safety
Measures of Infants from Unmarried
Mothers**

**익명출산제도 및 미혼모 출생아
보호방안에 대한 고찰**

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Abstract

Study on Confidential Birth and Safety Measures of Infants from Unmarried Mothers

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In historical perspective, infant abandonment is not a new phenomenon. From ancient Greeks to biblical times, infant abandonment, regardless of its motivation, was always part of the society. Ever since foundling wheels resurfaced as the baby box, an anonymous relinquishment of infants at designated safe locations, they have stirred up ethical dilemmas wherever they were established. Despite the good intention of saving lives of infants from infanticide, rights of mothers who wish to remain anonymous and rights of children who wish to know their biological origins became conflicts of interest in many countries practicing one of many models of the baby box. In few countries, the baby box evolved into an anonymous birth and confidential birth systems. Although French remained fully supportive of mother's anonymity in respect to their private lives, Germans, on the

other hand, brought forth the confidential birth system where the confidentiality of the mother is fully secured only until the child turns sixteen. After sixteen, the child is granted with a right to seek the court about his biological information. Safe Haven Acts of United States grants mothers immunity from persecution and anonymity only if infants are left unharmed. Japan, however, shares vast amount of similarities with the Korea's baby box in cultural and legal context. Therefore, by comparing historical, cultural, legal and ethical context of each country and various forms of safety net for the issues pertaining to infant abandonment, Korea's current baby box, and its relevant issues are thoroughly evaluated. Korea's Special Adoption Law, amended in 2012, is specifically examined in regards to the issue of increased infant abandonment rate. According to the study, it is evident that factors played in infant abandonment are non-uniform, but those who commit infant abandonment share certain characteristics. By achieving a manifestation of social marginalization on those who often commit infant abandonment, it is apparent that the active involvement of health care professionals followed by an introduction of confidential birth is vital for Korea to secure lives of relinquished infants.

Keywords: baby box, anonymous birth, safe haven, confidential birth, abandoned infant

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INTRODUCTION

A. Research Background

A rise in a number of childbearing among unmarried women has been the subject of public health concerns for past several decades. A report from the United States shows that the number of incidence of non-marital births has drastically increased from 18% in 1980 to 40.3% of all births in 2007 in the United States, 12 % to 30 % in Germany and France with the most dramatic increase of 39%.¹ A similar rise of up to 5 fold was also noted during the given period in most developed nations.² Although the idea of childbearing within marriage still prevails in East Asia, both Japan and South Korea showed constant growth in the number of nonmarital births. Such prevalence of non-marital births is especially alarming because numerous studies have found marital status as a significant risk factor for adverse birth outcomes of preterm birth (PTB),³ low birth weight (LBW),⁴ small for gestational age (SGA),⁵ and

¹ J. A. Hamilton BE Martin, Sutton PD, Ventura SJ, et al., "Births: Final Data for 2006," *National vital Statistics reports* 56, no. 7 (2009).

² P. S. Shah et al., "Maternal Marital Status and Birth Outcomes: A Systematic Review and Meta-Analyses," *Matern Child Health J* 15, no. 7 (2011).

³ V. L. Holt et al., "The Association of Change in Maternal Marital Status between Births and Adverse Pregnancy Outcomes in the Second Birth," *Paediatr Perinat Epidemiol* 11 Suppl 1 (1997); Z. C. Luo et al., "Disparities in Pregnancy Outcomes According to Marital and Cohabitation Status," *Obstet Gynecol* 103, no. 6 (2004); J. A. Zeitlin et al., "Marital Status, Cohabitation, and Risk of Preterm Birth in Europe: Where Births Outside Marriage Are Common and Uncommon," *Paediatr Perinat Epidemiol* 16, no. 2 (2002).

⁴ S. T. Bird et al., "Beyond Marital Status: Relationship Type and Duration and the Risk of Low Birth Weight," *Fam Plann Perspect* 32, no. 6 (2000).

infant mortality.⁶ Compared to married women, single, hereinafter, unmarried women were significantly associated with an increased risk for all of the adverse obstetric outcomes listed above,⁷ and their children were not only more socioeconomically disadvantaged with limited social and financial resources than their counterparts, but they were faced with even greater risk of PTB if they were from countries where over 80% of births occur to married women and nonmarital births were less common.⁸

Apparent popularity in premarital cohabitation resulting in increased nonmarital births only appeared about two decades ago as a result of changes in social norm, socioeconomic security, and family structures.⁹ However, historically, infant abandonment is not a new phenomenon. Infant abandonment has been ingrained in many countries, and while some cultures have always frowned upon the practice, others have embraced it as a way of life.¹⁰ Only recently, United Nations Convention on the Rights of the Child's Article 7 granted every child an equal right "to know and be cared for by his or her

⁵ *Ibid.*

⁶ J. Balayla, L. Azoulay, and H. A. Abenhaim, "Maternal Marital Status and the Risk of Stillbirth and Infant Death: A Population-Based Cohort Study on 40 Million Births in the United States," *Womens Health Issues* 21, no. 5 (2011).

⁷ Shah et al.

⁸ J. A. Zeitlin et al., "Marital Status, Cohabitation, and Risk of Preterm Birth in Europe: Where Births Outside Marriage Are Common and Uncommon," *Paediatr Perinat Epidemiol* 16, no. 2 (2002).

⁹ B. E. Hamilton, J. A. Martin, and S. J. Ventura, "Births: Preliminary Data for 2012," *Natl Vital Stat Rep* 62, no. 3 (2013).

¹⁰ D. Bradley, "Perspectives on Newborn Abandonment," *Pediatr Emerg Care* 19, no. 2 (2003).

parents.”¹¹ However, UNCRC neither saved a child from an infant abandonment nor decreased incidences of infanticides. Evident in growing number of infants relinquished at Korea’s baby box, when the right is violated, and the child is indeed abandoned for heterogeneous reasons, the most afflicted groups are always newborns and young children.¹² Because parents are often unfound in the act, reasons for the abandonment are left unknown, and the child is deprived of both emotional and physical stability in his early years of life that may result in impairment in emotional and behavioral development.¹³ Although, a volume of literature has been dedicated to finding associations between the fetal health level at infant period with acquired diseases and found that the fetal health has a serious long-term impact on most of the diseases acquired later in life leaving abandoned infants at an even greater risk for adverse health outcomes,¹⁴ limited research has been made on the nature of infant abandonment or sufficient attempts have been made to prevent the infant abandonment. Within the limited research, most of the studies related poverty or financial hardship,¹⁵ teenage pregnancy,¹⁶ extramarital affairs,¹⁷ unstable

¹¹ United Nations Conventions on the Rights of the Child, Article 7, https://www.unicef.org/crc/files/Rights_overview.pdf Accessed on 06/24/2017

¹² Lorraine Sherr and Natalie Hackman, "Abandoned Babies -- Abandoned Issue," *Counselling Psychology Quarterly* 15, no. 2 (2002).

¹³ Joanne Mueller and Lorraine Sherr, "Abandoned Babies and Absent Policies," *Health Policy* 93, no. 2–3 (2009).

¹⁴ D. J. Barker, "The Fetal and Infant Origins of Disease," *Eur J Clin Invest* 25, no. 7 (1995).

¹⁵ H. Bloch, "Abandonment, Infanticide, and Filicide. An Overview of Inhumanity to Children," *Am J Dis Child* 142, no. 10 (1988).

¹⁶ Dar-Oh; Park Lim, Sang-Hwa, "Study on the Risk of Preterm Birth in Teenage Delivery; Using 2003 Birth Certificate Data," *Korean Public Health Research* 31, no. 2 (2005).

mental health, contraceptive failures, social exclusion, and poor education as potential reasons for the abandonment,¹⁸ but until there is more data, no typical profile can be addressed on what triggered an infant abandonment.

The prevalence of infanticide, an active killing or discarding infants to die, is another issue closely related to infant abandonment because all of the infant relinquishment centers are designed to prevent infanticides. From an epidemiological perspective, annually 2.1 per hundred thousand newborns are either neglected or killed in one American state¹⁹ while Korea's infanticide rate shows an increase from 0.85% in 2012 to 1.76% in 2015.²⁰ Rates for infant abandonment and infanticide are understood to be underestimated because not all cases are found due to the hidden disposal of corpses.²¹ The analyses of women who abandoned their infants and those who committed infanticide show that, in agreement to the socioeconomic status of those who abandoned their infants, mothers who commit infanticides are also primarily young, unmarried, free of psychiatric disorders, who had unwanted pregnancies, lack of proper

¹⁷ Lee JY Kang MS, Lee SH, Oh EH, Lee CW, Choi B, Shin YD, Kim DJ, "The Obstetrical and Statistical Aspects of the Unmarried Mother," *Obstetrics & Gynecology Science* 45, no. 8 (2002).

¹⁸ Yu-Kyung; Cho Kim, Ae-Juh; Noh, Chong-rae, "미혼모의 출산 · 양육환경 개선을 위한 사회적 지원방안," in *한국보건사회연구원* (2006).

¹⁹ M. E. Herman-Giddens et al., "Newborns Killed or Left to Die by a Parent: A Population-Based Study," *JAMA* 289, no. 11 (2003).

²⁰ Korean National Statistics. Kosis.kr/startHtml/print.do?orgId=101&tblId=DT_1B34E08. Accessed on 05/01/2017

²¹ A. S. Botash, S. Blatt, and V. Meguid, "Child Abuse and Sudden Infant Death Syndrome," *Curr Opin Pediatr* 10, no. 2 (1998).

prenatal care, and of lower socioeconomic status. According to Friedman and Resnik's findings (2009), 91% of maternal perpetrators of infanticides concealed or denied their pregnancy and the most reported motive was an unwanted pregnancy which is identical to those who relinquish their infants at the baby box.²² So why do some women commit infanticide and some do not? The characteristics these two groups of women share and differ can, therefore, be utilized to gain further insight on the nature of infant abandonment, to prevent further incidences, and provide an adequate welfare system to protect one of the most marginalized groups of people.

B. Terminology

The comprehensive term "infant abandonment" encompasses various types of legal or illegal assistances by denominational or independent sector organization to ensure anonymity when pregnant women are giving birth or relinquishing their newborns. The following are types of relinquishment available in studied countries:

1. Baby Box: also known as baby hatch, babyklappe, stork's cradle, or safe haven is a designated safe facility where the biological mother can anonymously relinquish their newborn without persecution.
2. Anonymous Birth: childbirth at medical facility where the mother's privacy is legally protected during the delivery and is allowed to

²² Susan Hatters Friedman and Phillip J. Resnick, "Neonaticide: Phenomenology and Considerations for Prevention," *International Journal of Law and Psychiatry* 32, no. 1 (2009).

relinquish her child afterwards without any persecution. Currently an anonymous birth is largely practiced in France.

3. Confidential Birth: a childbirth practiced in Germany defined as where the pregnant woman does not disclose her real identity and uses a pseudonym instead. In order to process confidential birth, the mother provides her real first and last name, her birth date, and her address to the counseling center, which verifies the information and forwards it to the Federal Agency for Families and Civil Society Tasks (*Bundesamt für Familie und zivilgesellschaftliche Aufgaben*), where it is kept confidential.²³ A confidentially born child has a right to inspect the records once he/she turns sixteen years old (*Id.* § 31, para. 1.). Therefore, unlike an anonymous birth, the identity of the mother is registered but remains undisclosed at the time of childbirth.

C. Research Purpose

The purpose of this paper is to provide an extensive overview of many forms of infant relinquishment including the baby box in Korea and how each plays a role in different cultural context. Cross-national comparative studies provide important insights into analyzing various factors play in an infant relinquishment process, suggesting that the baby box tends to function as a last resort for many who seek an alternative option to adoption, abortion, and even infanticide in some societies due to its unique historical, cultural, legal and

²³ Pregnancy Conflict Act § 25, para. 1; § 26, para. 2, sentence 2; § 27, para. 1.

ethical context. Roles of health professionals in various sectors, in its unique capabilities to gain primary access to either the mother, relinquished infant or both, are examined to gain the extent of roles and responsibilities they play in securing the safety of infants. The objective of the study is to advance our understanding of varying methods of protection that existed for centuries to secure the life of infants. By deliberately sharing the historical and cultural aspects of infant relinquishment, different causes of infant relinquishment unique to each culture is observed. Also, reviewing legal and ethical aspects allows one to examine how each society perceived and attempted to tackle the problem. Like any cross-national comparative studies, analyses of heterogeneity provide an important insight into the meaning of infant relinquishments in multi-dimensional ways.

D. Methodology

The research focuses on the heterogeneity of infant relinquishment existing in different countries in order to serve as a comparable source for the baby box currently operating in Korea. Therefore, each country is compared within the frame of its unique historical and cultural context, legal and ethical aspects, economic aspects, and exploration of roles of healthcare professionals.

First of all, in order to explore infant relinquishments in historical and cultural aspects, the literature review was thoroughly conducted with means of collecting historical data from countries that have previously dealt with long-

standing infant abandonment problems. Although varies, countries with abiding infant abandonment problems have developed tactics suitable for their own culture. Therefore, information pertaining to the history of infant abandonment was largely collected from past studies of ‘foundling wheel,’ a precursor to many of modern baby box. Therefore, in the comparative study performed, each country shares a section for historical and cultural aspects of infant relinquishment. Secondly, legal data specific to each country were collected from their own government Civil Code. Current perspective on infant relinquishments was largely observed from legal cases they ruled and Civil Code they have articulated. Therefore, if available, legal cases were examined along with the Civil Code to gain an outlook of the status quo. Additionally, ethical aspects brought upon by the ruling of the legal cases were reviewed accordingly and in accordance with United Nation Human Rights Council. Although the conflict of interest universally exists in terms of endeavoring the middle ground for granting both of mother’s interest in anonymity and child’s right to know his biological origin, each country presented its own unique system (i.e., Confidential Birth Law in contrary to Anonymous Birth Law) therefore the comparative study of types of infant relinquishments existing in Germany, France, United States, Japan, and Korea were evaluated independently. Third, because the current utility of baby box is not under any federal regime, any information relevant to the Korea’s baby box is directly provided by the Ju-Sarang Community Church. In another word, the causes of the rise in a number of infants relinquished at the baby box, sociodemographic information of the population utilizing the baby box, and health outlook of

relinquished infants are all primarily provided from the interview with the Pastor who runs the baby box.

Moreover, the data from the nationwide birth registry examining 873,855 live births in Korea during 2014-2015 was also compiled to be analyzed and deliver the most current information on risk factors of preterm births, low birth weight, and small for gestational age that unmarried mothers face living in Korea where nonmarital births only occur less than 2% of all live births. Thereby highlighting the importance of critical roles healthcare professionals play in securing the safety of mothers and their infants. In Korea, all parents are required by law to register their child within one month of his or her birth at the local community centers and must provide the following information: sex, date of birth, place of birth (hospital or not), maternal residential address at the time of birth, parental ages, gestational age, birth order in multiple pregnancy, total number of births, parental nationality, parental education and parental occupation. However, parents are not required to report monthly income of any sort or any assets. Personal identification numbers were removed from the data in order to protect individual privacy, and for this reason all birth data were treated as if it is from different families, even if one couple gave birth more than once during the period. Exclusion criteria were established to narrow the study population into three groups mentioned above: married and not married. As multiple births are an important cause of preterm birth and low birth weight, 31,854 cases (3.6%) that involved more than singleton births were excluded from the study. At last, to ensure the validity of sub-group analyses, cases in which the father's original nationality was not Korean or cases in

which maternal nationality was unreported were excluded (15,758, 1.9%) along with the removal of cases with unidentified parental ages and their duration of cohabitation. Therefore, the number of births for final evaluation were 796,810 in which 790,792 (99%) were married and 6,018 were single (1%). Thereby, confirming that Korea's nonmarital births are indeed extremely low compared to other OECD countries and that these marginalized groups of the population needs extra attention because statistic findings show that 99% of international adoption is from unmarried mothers. Lastly, the different roles and responsibilities of healthcare professionals are studied using the disclosed information provided by the Children's Hospital in Seoul, a primary caregiver for relinquished infants of the baby box. Utilizing the sociodemographic information provided, one is able to grasp an understanding that these unmarried mothers often belong to the particular group with known risk factors for obstetric outcomes. Therefore, the study is followed by the advisory remarks on the different means of prevention and ways to decrease the adverse obstetric outcomes unmarried mothers' experience.

Chapter 1. Literature Review

A. History of Child Abandonment

The history of child abandonment by his or her biological parents goes longer than what anyone may expect. From the ancient Greeks to Hebrews, child abandonment was a prevalent practice for various reasons such as postnatal attempts to control the size of the family structure and to support a patriarchal society.²⁴ In biblical times, Moses' mother left him in a basket along the Nile to ensure the safety of his life from Egyptian Pharaoh and in Greek times as described by Sophocles, Oedipus, king of Thebes, was intentionally neglected by his biological father because Laius, the father of Oedipus, was warned in an oracle that he would be killed by his own son. As shown in the literature, circumstances and nature of motivations behind each abandonment vary.

In contrast to the prevalence of infant abandonment, history is also recorded with shreds of evidence of merciful attempts to save these "exposed infants" dating back to the fourth and fifth century in Europe by many religious orders and governmental organizations.²⁵ Popular sentiment of a charity called for many foundling hospitals which came to be considered as essential features of Christianity and civilized community. In the 12th century, *l'Ordre des Hospitaliers de St. Esprit* in Montpellier of France was opened to specifically care for abandoned infants, and later the church of Louis XIV

²⁴ Bradley.

²⁵ B. Fortier, "[Foundlings in Institutions in Quebec (1850-1950)]," *Laval Med* 36, no. 4 (1965).

advised Europeans to build a number of hospitals to meet the demand of increasing number of abandoned infants (Figure 1).²⁶ Around the same time, the first foundling wheel (*Ruota Dei Trovatelli*) was installed in 1198 when Pope Innocent III institutionalized its operation at the *Santo Spirito* Hospital in Rome, next to Vatican, to accept infants from unwanted mothers after discovering the vast number of drowned infants floating in the Tiber River. Soon after, numerous foundling wheels and orphanages were installed across other European nations. For instance, a wheel (*Drehladen*) was set up in an orphanage in Hamburg, Germany by a Dutch merchant, and France's first foundling wheel (*tours d'abandon*) and many more within hospitals (*Hôpital des Enfants-Trouvés*) were built in 1638 by Saint Vincent de Paul of Paris, France.²⁷ Although french foundling wheels were legalized in an Imperial decree of January 19, 1811, almost all of them were abolished by 19th century²⁸ because of an overwhelming number of infants abandoned as a result of the desperate economic situation occurred at the time. Foundling wheels were replaced by "admissions office (*bureau ouvert*)" where distressed mothers were still able to anonymously relinquish their infants and receive

²⁶ Michael H. Burnstein, "Child Abandonment: Historical, Sociological and Psychological Perspectives," *Child Psychiatry and Human Development* 11, no. 4 (1981).

²⁷ According to Anne Martin-Fugier, a writer on woman's issues, there were at most 251 foundling wheels in Paris, France. <http://enacademic.com/dic.nsf/enwiki/2110066> Accessed on 05/01/2017.

²⁸ The *tours d'abandon* were officially abolished in June 27, 1904. Nadine Lefaucheur, "The French 'Tradition' of Anonymous Birth: The Lines of Argument," *International Journal of Law, Policy and the Family* 18, no. 3 (2004). Pg. 321

counseling.²⁹



Figure 1. The foundling wheel at the *Ospedale Santo Spirito* in Rome & foundling wheel at the *Ospedale degli Innocenti* in Florence.

The modern day foundling wheel, also known as the baby box, made its return and it is spreading like a wildfire around the world. The first baby box appeared in July of 1999 in South Africa (Door of Hope) by a small mission church in Berea in Johannesburg. Since it opened, Door of Hope received over 1300 infants of which 148 were “dropped” directly into the baby

²⁹ Reports of the Secretary and the General Agent of the Board, "The Fifth Annual Report of the Board of State Charities of Massachusetts," in *Foundling and Deserted Children* (Boston 1869).

box.³⁰ The second baby box appeared later that year in Germany, but it was shortly closed due to its lack of usage. The necessity for the baby box, however, rose again in Germany the following year when series of abandoned infant was found dead in shoe boxes near recycling center in December of 1999.³¹ Consequently, the second baby box was installed near Sterripark e.V. in Germany in 2000, received 38 infants from 2000 to 2010, and became the prototype for many more baby boxes to come in the future. Today, baby boxes are called by many different names like babyklappe (Germany), baby safety island (China), stork's cradle (Japan), and the door of hope (South Africa). There are currently around 100 babyklappen in Germany, 45 in Poland, 44 in Czech Republic, 26 in Hungary, 16 in Slovakia, 8 in Lithuania, 8 in Italy, 1 in Belgium, 1 in Netherlands, 1 in Switzerland, 1 in Vatican, 1 in Canada, 1 in Malaysia, 1 in South Africa, 24 in China, 1 in Japan and 2 in South Korea.³² Indiana, United States, also installed its first 'safe haven baby boxes' in 2016.³³

³⁰ Door of Hope Children's mission statistics are found at <http://doorofhope.co.za/> Accessed on 03/20/2016

³¹ Ok-Ju Shin, "Eine Rechtsvergleichende Studie über Die Einführung Der Begrenzten Anonymen Geburt," [Eine Rechtsvergleichende Studie über die Einführung der begrenzten anonymen Geburt.] *Han Yang Law Review* 25, no. 4 (2014).

³² List of countries with operating baby hatch are found at https://en.wikipedia.org/wiki/Baby_hatch Accessed on 06/24/2017.

³³ Indiana Installs 'Safe Haven Baby Boxes' for Abandoned Newborns (2016), <http://www.nbcnews.com/news/us-news/indiana-installs-safe-haven-baby-boxes-abandoned-newborns-n568811> Accessed on 06/24/2017.

B. The Baby Box and Infanticides

Evident from previous findings, the baby box has made its comeback from medieval times for continuing issues of infant abandonment, and its only purpose is to prevent infanticides.³⁴ Infanticide and infant abandonment often achieve different consequences implying that two acts ultimately have different motivations, yet a recent study shows that these two acts have more common factors than what one may assume.³⁵ Contrary to the baby box where its users are rarely identified, and there are no accurate statistical data available in regards to understanding underlying causes or motives of their abandonment, perpetrators of infanticides are more convicted, therefore are more understood compared to the users of the baby box. If the assumption of the significant association existing between infanticide and infant abandonment is indeed valid, the study on infanticide perpetrators will provide useful insight on finding the appropriate solution for infant abandonment.

As evident in the profile analyses of infanticides, unless underlying causes of the infant abandonment are identified, and proper assistances are provided to women who are at a higher risk for these acts, the number of infanticides or infant abandonment will only outgrow in the most marginalized part of the society. The study by Kunkel (2007) notes that the core intention

³⁴ For the clarity of the study, distinctions between filicide, infanticide, and neonaticide should be defined as following: “the term filicide refers to the homicide of a child by a biological parent, infanticide commonly denotes the murder of an infant during the first 12 months of life but is a less precise term and lastly neonaticide is defined as a murder of an infant in the first 24 hours of life.” Friedman and Resnick. *Ibid.*

³⁵ *Ibid.*

behind the infanticidal act and abandonment is an unwanted child.³⁶ Therefore, it is safe to assume that women who choose to abandon their child in the baby box or at dumpster do so due to their unplanned pregnancies indicating the possibility that if there are active preventive measures to stop unplanned pregnancy, numerous incidences of infanticides, as well as infant abandonment, will decrease over the years.³⁷

C. Potential Limits of the Baby Box

Often the complexity of the motivation behind the infant abandonment, therefore identifying the appropriate solution, is not easily comprehended. Such is true especially within the scope of limited research, thus becomes easier to rely on a fast relief. Although the baby box serves its noble purpose to save, otherwise uncertain, lives of many infants, it most certainly is not limitless. The profound study of the origin, mechanisms, rapid extension, abuses, and limits of the baby box's prototype, a foundling wheel, would furnish an instructive understanding for the baby box. Therefore, throughout the study, various types of infant relinquishment existing in Western countries, as well as Eastern countries, will be studied and the safer protective measure will be appropriately

³⁶ K. A. Kunkel, "Safe-Haven Laws Focus on Abandoned Newborns and Their Mothers," *J Pediatr Nurs* 22, no. 5 (2007).

³⁷ When Bonnet, a child psychiatrist, (1990) published a book called *Geste d'amour, l'accouchement sous X* (A Gesture of Love: Anonymous Birth), she influenced many by arguing that "women who ask for secrecy and abandon their babies are really trying to protect them from their own infanticides wishes, rooted in the abuses they suffered during their own childhoods." C. Bonnet, *Geste D'amour; L'accouchement Sous X* (Paris, France: Odile Jacob, 1990).

advised.

Chapter 2. Comparative Study

A. Germany

1. History and Culture

Since the fifth century, Germany has made several attempts to aid distressed pregnant women conflicted among birth, abortion, adoption, and parenting.³⁸ From the twelfth to the nineteenth century, many Catholic churches³⁹ took special attention to women's afflicted situation to secure her anonymity (*Notlage*) and provided a various types of anonymous relinquishment of infants in order to secure the life of an infant from an imminent danger of abandonment and to free the third party from any liability.⁴⁰ Section 217 of the Imperial German Criminal Code of 1871 (StGB) also shows how the federal servants perceived the matter at the time. According to the Criminal Code, infanticide is defined as the killing of the illegitimate child by the mother. Perpetrators of this

³⁸ Gesetz zur Vermeidung und Bewältigung von Schwangerschaftskonflikten (Schwangerschaftskonfliktgesetz – SchKG) <https://www.gesetze-im-internet.de/beratungsg/BJNR113980992.html> Accessed on 02/01/2016.

³⁹ Catholic churches viewed unmarried mothers to be largely unequipped to be caregivers of their children, so child's welfare was solely society's responsibility. Jeffrey S. Richter, "Infanticide, Child Abandonment, and Abortion in Imperial Germany," *The Journal of Interdisciplinary History* 28, no. 4 (1998).

⁴⁰ Shin.

crime were punished less severely than other manslaughters because illegitimate births were often assumed to result from male deception and because the trauma of the childbirth was perceived as hindrance of illegitimate mother's soundness of mind.⁴¹

Donum Vitae⁴² in Amberg, Bayern e.V., a Catholic organization, established the first babyklappe in 1999 as a part of Moses project (*mose projekte*) to offer desperate pregnant women an alternative to committing infanticides. Although the babyklappe at Bayern was closed due to prolonged inactivity, in the following year, another babyklappe was built in Sternipark e.V. of Hamburg. Unlike the babyklappe at Bayern, the babyklappe at Sterniparke.V. was popularized to an extent where it initiated the spread of babyklappen to rest of Germany and other European countries.⁴³ Figure 2 shows the current process of the infants relinquished at the babyklappe. It is additionally important to note here that Germany had two additional types of anonymous care system (*Anonyme Kinderabgabe*) before Babyklappen were popularized. There was an anonymous birth system (*Anonyme Geburt*) of which a mother

⁴¹ Richter.

⁴² Donum Vitae (*I, Geschenk des Lebens*) is the instruction on Respect for Human Life in its Origin and on the Dignity of Procreation which was issued on February 22, 1987 by the Congregation for the Doctrine of the Faith. It addresses biomedical issues from Roman Catholic church's perspectives ever since.

http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19870222_respect-for-human-life_en.html Accessed on 03/01/2017.

⁴³ Donghyun Shin, "Babyklappe and Confidential Birth in Germany," [Babyklappe und vertrauliche Geburt in Deutschland.] *한겨레* 22, no. 4 (2015).

can leave the hospital after birth without any personal information given, and an anonymous deliverance system (*Anonyme Übergabe*) of which one can anonymously deliver the baby. The availability of anonymous birth system provided a medical assistance that babyklappe lacked of and minimized the danger of health risks related to the childbirth for both the mother and the newborn. From 2000 to 2008, there were thirty-one infants safely relinquished into babyklappen, and by May of 2010, about one hundred Babyklappen were established in various parts of Germany.⁴⁴

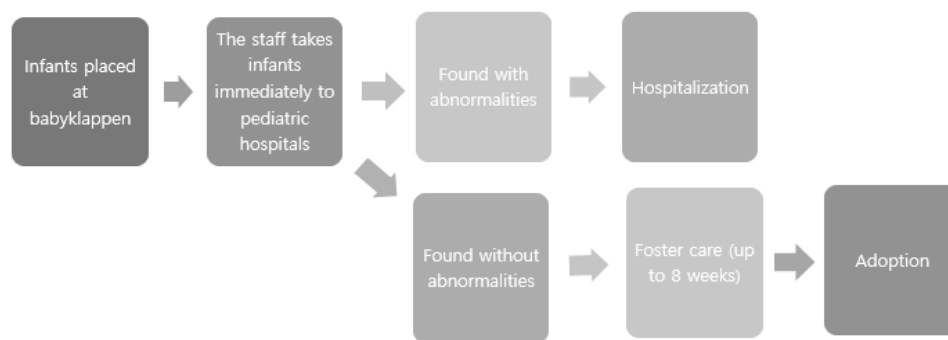


Figure 2. The Process of Infants Relinquished at Babyklappen⁴⁵

A study reports that babyklappen were successful in reducing the number of abandoned infants because prior to the establishment of babyklappen (Figure 3), about forty infants were abandoned a year, and of them, only fifty

⁴⁴ *Ibid.*

⁴⁵ Advanced medical and Cordial care at Jikei hospital, Kumamoto http://ninshin-sos.jp/yurikago_found/#fund_frame Accessed on 07/18/2017

percent survived.⁴⁶ However, the police report states otherwise indicating that no significant change has been made in the number of infanticides during the six-year period since the establishment of babyklappen. Such difference in findings suggests that there is a difference between child abandonment and leaving the child at the babyklappe in the knowledge that appropriate care will be provided to the infant. In response to the question of the effectiveness of babyklappen, German government eventually passed a “Confidential Birth Law (*Geburt vertaulich*)” in 2014 as a better alternative⁴⁷ to the babyklappe. Confidential Birth Law highlights the pragmatism of the babyklappe practice and preserves the essence of the anonymity without permanently violating child’s right to his biological roots.



Figure 3. The picture of German Babyklappe⁴⁸

⁴⁶ K. Sakamoto, "Baby Post in Japan and Related Issues," *J Philos Ethics in Health Care Med* 4 (2010).

⁴⁷ A recent study shows that Germany has tried several times before to pass the confidential birth bill (2000, 2001, and 2002) but failed before due to the conflict of interests in protection of rights of parents and that of a child Shin.

⁴⁸ Photo of a babyklappe in Schwenningen, Germany <http://www.babyklappe->

2. Legal and Ethical Aspects

Before Confidential Birth Law (*Gesetz zum Ausbau der Hilfen für Schwangere und zur Regelung der vertraulichen Geburt*, Aug. 28, 2013, BUNDESGESETZBLATT [BGBl.])⁴⁹ entered into force on May 1, 2014, to increase support for distressed pregnant women, Germans Ethics Council reported findings on maternal characteristics of infant relinquishments who utilized an anonymous birth or babyklappe. The reasons collected from mothers who gave birth anonymously or who have utilized babyklappe and disclosed her personal information were following: relationship problem, rape, unmarried mother's unavailability to cope, family pressure, extramarital affairs, shame, financial problems, and concealed pregnancies.⁵⁰ According to another study by Khun (2005), various forms of anonymous assistances were first designed as a supplement for the existing legal help provided by the child and youth welfare services under the provisions of SGB VIII.⁵¹ For instance, by Conflicted Pregnancy Act, any woman or man is entitled (Sections 2 and 6 SchKG) to obtain information and counseling from a state-approved conflicted pregnancy counseling centers on all matters regarding pregnancy. Pregnant mothers were already provided with anonymous counseling at this point (section 6). Even in

vs.de/index_Eng.html Accessed on 01/04/2017

⁴⁹ FEDERAL LAW GAZETTE I at 3458 http://www2.ohchr.org/english/bodies/crc/docs/CRC-C-DEU-Q-3-4-Add1_Part2.pdf Accessed on 06/24/2017.

⁵⁰ Deutscher Ethikrat, "Anonymous Relinquishment of Infants: Tackling the Problem," *German Ethics Council* (2009).

⁵¹ S. Khun, "Babyklappen Und Anonyme Geburt," *Sozialregulationen und sozialpädagogischer Handlungsbedarf* (2005).

the criminal proceedings, the members of the conflicted pregnancy centers are allowed to refuse to furnish evidence on matters known to them (Section 53: 1). However, it is evident from the rising number of the relinquishment of infants to babyklappen that women, like those who sought anonymity as above, were unreached by the formal establishment of legal help.

Therefore, with realistic demand, the Act amended several laws, in particular, the Act to avoid and manage pregnancy conflicts (Pregnancy Conflict Act) and introduced the concept of “confidential births.” The confidential birth procedure, regulated in sections 26 and 34 of the Act on pregnancies in conflict situations, emphasizes the importance of counseling by making in-depth, non-directive counseling a mandatory step for a confidential birth. After prospective mother completes her in-depth counseling, she is able to choose a pseudonym and the first name of a child. Then, the counseling center enters her personal information into the certification of parentage and seals in an envelope. The envelope is marked only with a pseudonym, birth data, and the address of the counseling center so if the child wishes to learn about his or her family history sixteen years later; the envelope can be matched. Her pseudonym is used again to reserve an appointment for her delivery in a hospital or with a midwife, so her anonymity is protected while securing a safe delivery thereby protecting the life of an infant and the mother. After the delivery, the hospital is obligated to inform the counseling center about the place, and the date of birth and the collected information is sent to the Federal offices of Family Affairs and Civil Society Functions for protection (*Das*

Bundesamt für Familie und zivilgesellschaftliche Aufgabe).⁵² Even if the mother is admitted for delivery without prior counseling, she still holds the granted right⁵³ to deliver confidentially as long as the hospital informs the local counseling center and the mother completes her counseling afterward. The mother is also offered with counseling and assistance that the mother was already entitled to by the law that was passed in 1992 and later amended.^{54,55} Also, if the mother decides to take her child back, her wish can only be denied if it is not in the best interest of a child.⁵⁶

From the process mentioned above, it is apparent that Germany's new Confidential Birth Law has made an appealing compromise between two conflicts of interests (the mother's right to anonymity and the child's right to know his biological origin) that occur during the childbirth. The Act on

⁵² Civil Status Act (Personenstandsgesetz –PStG) Section 18 <https://www.gesetze-im-internet.de/pstg/BJNR012210007.html> Accessed on 06/20/2017

⁵³ Civil Status Act (Personenstandsgesetz –PStG) Section 29 (1) SchKG <https://www.gesetze-im-internet.de/pstg/BJNR012210007.html> Accessed on 06/20/2017

⁵⁴ Gesetz zur Vermeidung und Bewältigung von Schwangerschaftskonflikten (Schwangerschaftskonfliktgesetz – SchKG) <https://www.gesetze-im-internet.de/beratungsg/BJNR113980992.html> Accessed on 06/20/2017

⁵⁵ Some of the counseling service include following: “1) sex education, contraception, and family planning, 2) Available family support benefits and assistance for children and families, including special rights in employment, 3) Preventive checkups during pregnancy and costs of childbirth and 4) social and economic assistance for pregnant women, including financial benefits and assistance in finding or keeping accommodation, employment and training place.” <https://www.gesetze-im-internet.de/beratungsg/BJNR113980992.html> Accessed on 06/20/2017

⁵⁶ Section 1674a in conjunction with sections 1666, 1666a Civil Code – BGB <https://www.gesetze-im-internet.de/beratungsg/BJNR113980992.html> Accessed on 06/20/2017

Assistance to Avoid and Cope with Conflicts in Pregnancy (*Gesetz zur Vermeidung und Bewältigung von Schwangerschafts – konflikten / Schwangerschafts-konfliktgesetz*) Section 31 states that once the child turns 16, he or she is entitled to demand his or her certification of parentage. However, the mother is entitled to state her interests that countervail the right of access to a counseling center when the child turns fifteen, which then the court decides if the mother is under special circumstances that make her right to stay anonymous more important than the right of the child to know his or her parentage.⁵⁷ Instead of severing the tie between the mother and her child permanently by allowing the babyklappe to be the only resort afflicted pregnant women can depend upon, Germans found an alternative that can grant the safety of both the mother and the child by introducing the confidential birth system in the medical setting. It has been only a few years since the new law was enacted, so it is still in its adjusting stage, but according to recent findings, ninety-five women have already chosen to take benefit from the new system.⁵⁸

Aside from Confidential Birth Law, surrounding factors attributing to unmarried mothers rearing their children should also be examined in order to further understand the complex situation that might affect mother's choice after the delivery. In Germany, the percentage of single parenthood is rising, and it is often understood as one of the options available to German people who choose to raise their children. In another word, single parenthood is perceived as a new

⁵⁷ Sang-Yong Kim, "베이비박스과 익명의 출산," [Babyklappe und anonyme Geburt.] *법학연구* 54, no. 4 (2013).

⁵⁸ Jae-Mun Kwon, "익명출산에서 익명상담으로," *동북아법연구* 8, no. 3 (2015).

form of a lifestyle relevant to the “social change” (*soziale wandel*).⁵⁹ Because abortion is legally permitted upon the choice of the mother within twelve weeks of pregnancy, government intervenes at the “pregnancy conflict” level.⁶⁰ Instead of strictly prohibiting abortion, German law is directed at providing the necessary measures like the professional counseling centers and confidential birth to aid the distressed women in a varied situation of pregnancies and childbirth. If unmarried mothers choose to rear their children after a counseling process, the Clause 5 of Article 6 of the basic law provides the protection for the non-marital births stating that children born non-maritally should be treated equally with the children of married couples.⁶¹ In Germany, 90% of single parents are unmarried mothers, therefore, the significant portion of government’s welfare policies are directed at childbirth and living arrangements of unmarried mothers. Along with the issues of infant relinquishments, government analyzes the socioeconomic and health issues of unmarried mothers and provides legal and practical solutions. According to the study by Shin, there is no particular law designed to target unmarried mothers, however, under the

⁵⁹ Ok-Ju Shin, "Eine Studie über Die Rechtliche- Und Praxisbezogene Massnahmen Für Alleinerziehende in Deutschland," *Ewha Journal of Gender and Law* 2, no. 2 (2011).

⁶⁰ The Population Policy Data Bank maintained by the Population Division of the Department for Economic and Social Affairs of the United Nations Secretariat. (2014) <http://www.un.org/en/development/desa/population/publications/pdf/policy/AbortionPoliciesReproductiveHealth.pdf> Accessed on 06/24/2017

⁶¹ Art. 6 (5) Den unehelichen Kindern sind durch die Gesetzgebung die gleichen Bedingungen für ihre leibliche und seelische Entwicklung und ihre Stellung in der Gesellschaft zu schaffen wie den ehelichen Kindern. “Legitimate children are to create the same conditions for illegitimate children for their physical and mental development and their position in society as for illegitimate children.” Basic Law for the Federal Republic of Germany. https://www.gesetze-im-internet.de/gg/art_6.html Accessed on 06/24/2017.

fundamental law single mothers are granted with the right to receive financial support from the federal government. Few of the many aids are following: 1) the Social Guarantee Act secures the minimum wage allowance for the unmarried group of mothers, and their children can receive a child benefit age accordingly, 2) Federal Employment Equality Act, formally known as *Gesetz zur Durchsetzung der Gleichstellung von Frauen und Männern*, provides a various support, such as “family duty, part-time work, and banning of discrimination due to the termination of a job,” 3) also, Parent’s Rearing and Holiday Act provides an allowance for a maximum of 14 months and flexible holidays to provide the care for their children. With the consent of employers, parents can extend to have the parents’ holiday for up to eight years, 4) lastly the aid extends to the foreigner’s children living in Germany as well. If the income is below 3,500 euros for a single parent (*Alleinerziehende*), or 6,700 euros for a married couple (*Splittingtarif*), the child is entitled to receive the benefit until he turns 18 years old. At 18, if the child is able to provide for himself of an amount up to 8,004 euros, the benefit discontinues. However, if he is not able to provide for himself or is in college-level education, he can receive the child benefit until the age of 25. All of the benefits above began to settle around 2010 and statistics show the constant rise in the total fertility rate since then.⁶²

⁶² Shin, "Eine Studie über Die Rechtliche- Und Praxisbezogene Massnahmen Für Alleinerziehende in Deutschland."

3. Costs related to Infant Relinquishments

Although the equipment varies, the installation of babyklappe costs between 20,000 and 80,000 euro of which additional costs of maintenance and on-call labors are not included.⁶³ Until 2009, no federal funds have been used for the establishments, so these facilities predominantly rely on donations, clinics' budgets or youth welfare services for its establishment and operation.

The confidential birth is significantly different from the babyklappen. Facilities for confidential birth, which include counseling, pre and post-natal care, and delivery are entirely funded by the federal government.⁶⁴ According to section 34, paragraph 1 of the Pregnancy Conflict Act, the German Federal government is to reimburse all the costs that arise concerning to the confidential birth, as well as those for prenatal and postnatal care. The reimbursed costs are the same as those covered by the statutory health insurance for pregnancy and motherhood.⁶⁵ The Federal Agency for Families and Civil Society Tasks act on behalf of the federal government.⁶⁶ The annual budget for the year 2017 includes a commitment to appropriate €5,112,000 (about US 5,719,050 USD) for education in connection with implementing the Pregnancy Conflict

⁶³ Swientek, "Im Jahr 7 Der Anonymisierung Von Kindern. In: Terre Des Hommes (Ed.): Babyklappe Und Anonyme Geburt - Ohne Alternative?," *Osnabruck* (2007).

⁶⁴ Shin.

⁶⁵ Gesetz zur Vermeidung und Bewältigung von Schwangerschaftskonflikten (Schwangerschaftskonfliktgesetz – SchKG) § 34, para. 1, sentence 2. <https://www.gesetze-im-internet.de/beratungsg/BJNR113980992.html> Accessed on 06/24/2017

⁶⁶ *Ibid.* § 34, para. 4. <https://www.gesetze-im-internet.de/beratungsg/BJNR113980992.html> Accessed on 06/24/2017

Act.⁶⁷ Furthermore, €7,000,000 (about 7,840,350 USD) is appropriated for subsidies and costs in connection with involuntary childlessness and to increase support for pregnant women and regulate confidential births.⁶⁸ In addition, €807,000 (about 902,831 USD) has been allocated to the Federal Center for Health Education (*Bundeszentrale für gesundheitliche Aufklärung*) for education and counseling related to the Pregnancy Conflict Act.⁶⁹

4. Roles of Healthcare Professionals

In Germany, different types of healthcare professionals are involved to alleviate the issue of infant abandonment. Not only healthcare professionals are involved for the first medical examinations after the infant is deposited at the babyklappe, as briefly mentioned before, abortion is legally permitted “to save the life of the woman, to preserve physical health, and to preserve mental health” or in cases of “rape or incest, fetal impairment, socioeconomic reasons or upon request.” In the case of latter two indications, abortions are allowed only during the first 12 weeks of pregnancy while the first two indications are permitted until the late

⁶⁷ Bundeshaushaltsplan 2017, Einzelplan 17 [Federal Budget 2017, Individual Plan 17], at 71 https://www.bundeshaushalt-info.de/fileadmin/de.bundeshaushalt/content_de/dokumente/2017/soll/epl17.pdf Accessed on 06/22/2017.

⁶⁸ *Ibid.* https://www.bundeshaushalt-info.de/fileadmin/de.bundeshaushalt/content_de/dokumente/2017/soll/epl17.pdf Accessed on 06/22/2017.

⁶⁹ Bundeshaushaltsplan 2017, Einzelplan 15 [Federal Budget 2017, Individual Plan 15], at 52. https://www.bundeshaushalt-info.de/fileadmin/de.bundeshaushalt/content_de/dokumente/2017/soll/epl17.pdf Accessed on 06/22/2017.

pregnancy. Except for medical reasons, women must also attend a pre-abortion social counseling session with a physician to get an abortion at a hospital or other authorized facility thereby decreasing the chance of unwanted pregnancies or illegal abortions.⁷⁰

One thing in common for pre and post-Confidential Birth Law is that there is an extensive counseling provided by the Federal Government for every distressed pregnant woman. Counseling is given by the counseling centers that offer anonymous birth in cooperation with a hospital, by doctors and also by health care insurances before the new policy was introduced.⁷¹ The enactment of the Confidential Birth Law, only strengthen the importance of the counseling and emphasized the importance of intervention of medical professional for the safe delivery of all pregnant women. Help and counseling were also continued to be given at the babyklappe to mothers who wish to relinquish their infants via babyklappe. There was also a movement by some federal Lander to include information on the availability of facilities for an anonymous birth of infants in school curricula.⁷² Such movement was also seen locally. In Mecklenburg-Western Pomerania, a federal state in northern Germany, sex education in biology lessons included information on the possibility of anonymous birth and

⁷⁰ The Population Policy Data Bank maintained by the Population Division of the Department for Economic and Social Affairs of the United Nations Secretariat. (2014) <http://www.un.org/en/development/desa/population/publications/pdf/policy/AbortionPoliciesReproductiveHealth.pdf> Accessed on 06/24/2017

⁷¹ Ethikrat.

⁷² Bundesregierung, "Auswertung Der Erfahrung Mit Anonymer Geburt Und Babyklappe," *Antwort der Bundesregierung auf die Große Anfrage der Abgeordneten Ina Lenke, Gisela Piltz, Sibylle Laurischk, weiterer Abgeordneter und der Fraktion der FDP*, no. 16 (2007).

the locations available for infants to be safely relinquished. Other health education and biology classes also covered availability of facilities for anonymous relinquishments.⁷³ Multiple drafts have been made before the Confidential Birth Law was legalized. One of the drafts is a Birth Counseling Law (*Geburtsberatungsgesetz*) submitted by the Free State of Bavaria in 2004. It proposed a graduated model of the Baden-Württemberg draft law, similar to current confidential birth law.⁷⁴

Moreover, if a pregnant woman who wishes to have a confidential birth, and who did not have counseling comes to a hospital or midwife, the hospital and midwife must inform the closest counseling center without undue delay. The counseling center then provides psychosocial counseling and informs the women about the confidential birth procedure and related issues. If necessary, the counseling may also take place after the woman has given birth.⁷⁵ If the newborn born in a confidential birth procedure, the hospital or midwife is obligated to inform the counseling center about the birth date and birth place of the child.⁷⁶ In addition, within one week of the birth, the hospital or midwife

⁷³ J Neuerburg, "Praktische Erfahrungen Mit Anonymen Geburten Und Babyklappen Aus Der Sicht Der Anbieter," *Öffentliche Anhörung des Deutschen Ethikrates zum Thema "Anonyme Geburt/Babyklappe"* (2008).

⁷⁴ Ethikrat.

⁷⁵ Gesetz zur Vermeidung und Bewältigung von Schwangerschaftskonflikten [Schwangerschaftskonfliktgesetz - SchKG] [Act to Avoid and Manage Pregnancy Conflicts] [Pregnancy Conflict Act], July 27, 1992, BUNDESGESETZBLATT [BGBl.] [FEDERAL LAW GAZETTE] I at 1398, as amended, § 29 <http://www.gesetze-im-internet.de/bundesrecht/beratungsg/gesamt.pdf> Accessed on 07/15/2017

⁷⁶ *Ibid.* Pregnancy Conflict Act, § 26, para. 6.

must forward the name of the child, mother's pseudonym, birth date, birth place, and gender of the child to the registry office (*Standesamt*) and must indicate that the birth was confidential. The registry office then issues a birth certificate.⁷⁷

If the newborn is abandoned or relinquished to the Babyklappe, the law treats it as a foundling. The health care professionals is obligated to inform the municipal authority the next day at the latest.⁷⁸ The municipal authority must investigate the origin of the child and inform the administrative authority of the result.⁷⁹ The administrative authority is to determine the probable place and date of birth and the first and last name of the child, and order the registration of the birth in the birth registry.⁸⁰

B. France

1. History and Culture

Apart from Luxembourg, Italy, and the Czech Republic where the law allows the woman to withdraw from disclosing their identity on their child's birth certificate, France was the only Western country that granted full anonymity to

⁷⁷ Personenstandsgesetz [PStG] [Personal Status Act], Feb. 19, 2007, BGBl. I at 122, as amended, § 18 & § 21, para. 2a. <http://www.gesetze-im-internet.de/pstg/PStG.pdf> Accessed on 07/15/2017

⁷⁸ *Ibid.* § 24, para. 1.

⁷⁹ *Ibid.*

⁸⁰ *Ibid.* § 24, para. 2.

mothers and enabled them to deliver in a medical setting free of charge. Father Vincent de Paul, a Roman Catholic priest, canonized in June of 1737, instituted the first foundling home in 1638 in Paris. After royal decree, the wheels were legalized in 1811 for Paris hospitals. Therefore, France is the first European country where women can give birth in a clinical setting without disclosing their identity and can relinquish the parental rights without persecution. As with the German foundling wheels though, the number of abandoned infants grew to unmanageable proportions, and in 1863, wheels were replaced by admission offices where mothers were allowed to relinquish their infants safely. The idea of anonymous birth appeared in 1691 when *l'Hotel-Dieu* (the oldest hospital in Paris) granted permission for pregnant women to give birth anonymously. However, it was not until June, 28th of 1793,⁸¹ such act was legalized,⁸² and the Act of *Accouchement sous X* (Anonymous Birth) was legalized in 1941 when all public hospitals were required to admit pregnant women requesting secrecy to give birth free of charge and without any disclosure.⁸³ Baby drops were naturally abolished around this time. According to the study by An, French Anonymous Birth Law evolved historically via three specific

⁸¹ The decree of the National Convention secularizing assistance to children, the elderly and the poor; provided assistance for unmarried as well as married mothers, and calls for free maternity homes for unmarried pregnant women in every district, to keep 'the most inviolable secret' of such women. Lefaucheur.

⁸² Jeonghee Seo, "Comparative Study on the Birth Registration," [Comparative Study on the Birth Registration.] *Yonsei Law Journal* 27, no. 0 (2016).

⁸³ "Any persons refusing to admit such women were suspended for at least one month, and fined or sentenced to one to six months' imprisonment." This government decree by Pétain is considered the true origin of anonymous birth in France. Lefaucheur.

incidents.⁸⁴ First of all, biological mothers were no longer required to reveal her name on the birth certificate after the French revolution.⁸⁵ The 1933 law secured mother's confidentiality even if a child files a lawsuit in a wish to find his biological origin. From the moment biological parents are relinquished from parental responsibilities, they are eternally granted with anonymity. Lastly, previous policies made it natural for the French government to remove the foundling wheels and introduce the Anonymous Birth Law into their society. France is also well known for its liberalistic view on accepting new forms of the family. In 1999, France introduced "*pacte civil de solidarité*," more commonly known as PACS, a contractual form of civil form between two adults living together. The PACS offered a legal responsibility and rights to the civil union between opposite-sex couples as well as same-sex couples. Since 2006, individuals who have filed PACS are no longer considered single regarding marital status; rather it shows their status as *paces*.⁸⁶ The total fertility that marked lowest of 1.66 in 1994 was also increased to 1.90 in 2004 and reached 2.02 in 2010.⁸⁷ The way France recovered from the low fertility rate has been

⁸⁴ Moon-Hee An, "L'Accouchement Sous X En Droit Français -Relatif a La Decision De La Cedh(Odievre C. France)," [L'accouchement sous x en droit français -Relatif a la decision de la CEDH(ODIEVRE c. FRANCE) -.] *CHUNG_ANG LAW REVIEW* 15, no. 4 (2013).

⁸⁵ *Ibid.* Prior to the revolution, women were condemned for committing infanticide or abandoning children. However, by the decree of 28 June 1793 aimed not to punish women but to ensure safe and confidential delivery.

⁸⁶ Joelle Godard, "Pacs Seven Years On: Is It Moving Towards Marriage? (Civil Partnership between Two Adults)," *International Journal of Law, Policy and the Family* 21, no. 3 (2007).

⁸⁷ Hyo-Jung Kim, "'낳기만 하면 기르는 것은 국가의 몫'... 비혼(非婚)출산 육아도 국가가 책임져야!," *Chosun Newspaper* 2017.

studied, and many works of literature have pointed to France's high incidences of non-marital births to be responsible for its fast recovery. In the 1970s, France only had 7% of nonmarital births but only 30 years later, it has peaked over 50%, and in 2012, the non-marital births reached 56.7% of all live births. After the fertility declined in 1994, French government took an active step toward resolving its low fertility issues by introducing PACS and the rapid increase of France's total fertility rate is another evidence for the success.⁸⁸

In France, mothers receive a child benefit for nine months before or after the child birth. The percentage of GDP spent on child care is also over 5% meaning that Government is determined to provide the necessary environment for anyone to choose childbirth and raise their children. Moreover, the fact that all of the benefits are provided regardless of marital status is one of the reasons for France's high civil union rate and non-marital births. Because French government provides sufficient aid to give birth and raise children, many accept PACS as their personal preferences.

According to findings from the National Institute for Demographic Studies (INED), the number of anonymous birth rose from 588 in 2005 to 700 in 2010. When the sociodemographic characteristics of the mothers who gave birth anonymously from 2007 to 2009 were analyzed, the results showed that mothers were often younger than the average of mothers who give birth (26 years vs. 30 years). Also, compared to the general population, the anonymous birth group was composed of more minors (11% vs. 0.5%), more 18-20 years old (18% vs. 3%), first time mothers (49% vs. 42%) and were more likely to be

⁸⁸ An.

a student (27%) who lived with their parents (42%). Eight out of ten did not cohabit with their partner, 28% were unmarried, and three out four women lacked financial independence. Lastly, the absence of the biological father was the most frequently cited reason (43%) for the anonymous delivery followed by financial distress, young age, and family rejection, and varying degrees of traumas. As the law allows the biological parents to change their mind up to a two-month time limit, 14% of mothers retrieved their children, 23 % chose to disclose their identity if the child wishes to seek his biological origin, 31% left a sealed envelope containing their identity, and 46% of the mothers left nothing to be disclosed.⁸⁹

2. Legal and Ethical Aspects

The anonymous birth in France is established by article 326 of the Code Civil (Civil Code), which provides that “during childbirth, the mother may request that her admission [to the hospital] and her identity be kept secret” (CODE CIVIL art. 326).⁹⁰ The manner in which anonymous birth is supposed to occur in France is set out in article L222-6 of the code l’Action Sociale et des Families (Code of Social Action and Families).

The option of giving birth free of charge in a public or private maternity

⁸⁹ Women Who give Birth “Secretly” in France (2007-2009)
http://www.ined.fr/en/everything_about_population/demographic-facts-sheets/focus-on/women-giving-birth-secretly-france/ Accessed on 06/22/2017.

⁹⁰ Civil Code Article 326
https://www.legifrance.gouv.fr/affichCodeArticle.do;jsessionid=ABADF220D7D795E304173C0B9EDB29E7.tpdila23v_3?idArticle=LEGIARTI000006425119&cidTexte=LEGITEXT000006070721&dateTexte=20170524 Accessed on 05/20/2017

unit without disclosing one's identity has been inscribed in French Family law since 1941 by Vichi regimen and in the French Civil Code since 1993. However, it is the ruling of *Odièvre c. France* that confirmed the stance French government takes on the issue of confidentiality. Pascale Odièvre, who was born in Paris, France, filed a lawsuit against the district court when she was denied access to her confidential birth related files prior to her adoption because her biological mother signed the relinquishment document and she was subsequently adopted. When she was denied, she requested a revocation of anonymity granted on her birth files that Paris district court rejected. Later, she sued Country of France for violation of Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms (November 4th, 1950) entered into force on September 3rd, 1953.⁹¹ However, European Court of Human Rights (*La Cour Européenne des Droits de l'Homme: CEDH*) ruled in favor of France stating that French confidential birth law is not in violation of neither Article 8⁹² nor Article 14 because no family life as described in Article 8 existed between her biological mother and Odièvre because they were separated from birth and mother's request to remain anonymous is a legitimate one in her distress condition, and that French domestic legislation had carefully

⁹¹ An.

⁹² ECHR Article 8 states that "1) everyone has the right to respect to his private and family life, his home, his correspondence and that 2) there shall be no interference by a public authority with the exercise of this right except such as in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedom of others."

<https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/0900001680063776>

Accessed on 06/22/2017

measured the balance between women's interest in non-disclosure and child's interest in gaining such information and considered pregnancy and motherhood as a private life that must be protected by law.⁹³ As seen in the rulings of Odièvre case, the issue of women's right to give birth anonymously in contrast to the right to know one's biological origin is a highly sensitive debate. Currently, when the mother is completely relinquished of her responsibilities, the child is transferred to a children's home under a protection of the federal government. Two months of idle time is granted for the biological mother to change her mind, however, if she does not, the adoption process begins two months after the birth of the child. Under the French Civil Law Article 57, Clause 1, the hospital may suggest the biological mother to leave her identification to the child in sealed envelope but is not mandatory. Also, since 2002, if the mother desires to disclose her identity, she can contact the National Council for Access to Personal Origins (CNAOP)⁹⁴, however, the department will not communicate with the child to inform him about it because it remains within child's right to contact the organization. Although only about 600 women currently make use of this right every year, women's right to *accouchement sous X* seems imperative for many advocates for reasons more

⁹³ Ursula Kilkelly, *The Right to Respect for Private and Family Life*, (Germany: Council of Europe, 2001).

⁹⁴ The National Council for Access to Personal Origins (CNAOP) was voted unanimously by the deputies in order to increase an access to personal origins. "However, as the Civil Code of Social Action and Families declare, person's access to his or her origins has no effect on marital status and filiation. It does not give rise to any right or obligation for the benefit or the burden of any one." (L. 147-7) <http://www.cnaop.gouv.fr/Lever-le-secret-de-son-identite.html> Accessed on 06/22/2017.

than their personal usage.⁹⁵

Accouchement sous X poses the similar dilemma to the community as that of the baby box, because even though the court ruled in favor of the anonymous birth in the Odièvre case, there is a group of people who wish to see the law abolished for the same reason some people asks for an abolishment of the baby box. However, unlike the baby box, the movement against *accouchement sous X* is more often personal because it is mostly made up of a different group of people profoundly affected by *accouchement sous X* in one way or another. Therefore, their objections to the anonymous birth are largely political and psychological. They argue that robbing child's right to know his roots causes a great suffering which can then affect his or her identity formation and sometimes testimonials of biological mothers, looking for their biological children claiming to have been misinformed about the anonymous delivery appear as well. At the end of May each year, people born anonymously demonstrate their right to know their parentage and for the abolition of the anonymous birth.

On the other side of the *Accouchement sous X* are advocates for the continued practice of anonymous delivery. The group of people who support an anonymous delivery is mainly composed of Academy of Medicine (primarily obstetricians and pediatricians), adoptive families, anti-rape movement activists and members of family planning organizations who wish to maintain the 1941 law. Their main arguments are in the line of saving both the mother and the child, a traditional approach to the issues of an infanticide, abortion,

⁹⁵ An.

unsupervised delivery and abandonment. Due to the natural order existing in life, survival of infant is solely dependent upon the decision of his pregnant mother during the earliest stages of his life. For such reason, if the child's right prevails over the mother's right, the child will never exist. Consequently, mother's rights superseding the rights of the child. Overall, traditional argument of saving a life of a newborn by preventing infanticides still prevail therefore strengthening the argument for keeping anonymous delivery in France. Another study by Lefaucheur (2004) claims that since the 1975 law authorized the termination of pregnancy (IVG), lawmakers are utilizing the *accouchement sous X* for the group of pregnant women who failed to adhere to the deadline of an abortion as a means of compensating for the limits of the law after 1975 law authorized the termination of pregnancy (IVG) while others radically argued that it was a matter of a chronology issue.⁹⁶

3. Costs

The second paragraph of the article L222-6 provides that the costs associated with the birth of a child whose mother chose to give birth anonymously are the responsibility of the child social welfare services (*service de l'aide sociale à l'enfance*) of the *département* in which the hospital or medical center is located.⁹⁷ The welfare department bears the cost of accommodation and

⁹⁶ Lefaucheur.

⁹⁷ CODE DE L'ACTION SOCIALE ET DES FAMILLES art. L222-6. « Any woman who asks at the time of her confinement the preservation of the secrecy of her admission and her identity by a health establishment is informed of the legal consequences of this request and of the importance for everyone to know its origins and its history. She is therefore invited to leave, if she accepts it, information on her health and that of the father, the child's origins and the circumstances of the

childbirth for women who have applied for admission to a public or private institution under the agreement to have their identity preserved. The referred women are also provided with psychological and social support by the social welfare department at their request or with their agreement. For the purpose of preserving anonymity, no identification is required, and no investigation is carried out. The social welfare services also cover the cost of accommodation and childbirth in a public or private institution agreed by women, who without requesting the secrecy of their identity, entrust their child with a view to adoption. The *départements* is one of the principal territorial supervisions of France. The country is divided into 101 *départements*, including five overseas *départements* (Guadeloupe, Martinique, French Guyana, Réunion, and Mayotte).⁹⁸ Each *départements* has its own budget, and there appears to be no section or line item for costs associated with anonymous birth specifically. For example, the annex for child welfare services indicates that Paris budgeted €111,176 (about 124,370 USD) for services of a medical nature, but there is no indication of how much of this sum (if any) is to be allocated to anonymous births specifically. Since each *département* has its own budget and may follow different practices with regard to what it publishes, it is conceivable that some out of the 101 *départements* may publish more granular data on child welfare services, which would include the information specific to anonymous birth, but

birth and, under sealed envelope, his identity. » <https://www.legifrance.gouv.fr/affichCodeArticle.do?cidTexte=LEGITEXT000006074069&idArticle=LEGIARTI000006796805> Accessed on 06/24/2017

⁹⁸Legal and administrative information provided at <http://www.vie-publique.fr/decouverte-institutions/institutions/collectivites-territoriales/categories-collectivites-territoriales/qu-est-ce-que-departement.html> Accessed on 01/02/2017

at this point, it appears that most *départements* do not go down to that level of specificity.⁹⁹

4. Roles of Healthcare Professionals

It is estimated that there are about 500 anonymous births per year (Table 1).¹⁰⁰ The importance of roles healthcare professionals partake in is highlighted in the sociodemographic study conducted by Bonnett. According to the research conducted by Catherine Bonnet, a psychiatrist and an author of *Geste d'amour: Childbirth under X*, pregnant women who chose to deliver anonymously were under great psychological stress, often were victims of moral harassment, sexual abuse, and experienced various forms of violence during their childhood and adult lives.¹⁰¹ Findings state that none of them gave financial distress as a reason for their choice as much federal support is available to pregnant women. To these women, anonymous birth was a way of entrusting their children for the safest option available. By allowing the childbirth to take place in a clinical setting with medical supervision, a clinician is able to provide necessary measures to these varying degrees of medical relevant problems. Another study carried out by National Institute for Demographic Studies in June, 2010 showed that among 504 out of 835 women who stated reasons for the anonymous delivery, 45% claimed to have acknowledged pregnancies after 4 months of

⁹⁹ DÉPARTEMENT Des Yvelines, "Budget Primitif De L'exercice 2017," RÉPUBLIQUE FRANÇAISE.

¹⁰⁰ Bundesregierung.

¹⁰¹ Bonnet.

pregnancy, 31 % after the 6 months of pregnancies, while 8% realized their pregnancies upon delivery.¹⁰² In conclusion, more than eight out of ten only became aware of their pregnancies after the legal time limit for abortion. The denial of pregnancies was indicated as common characteristics of women who choose to deliver anonymously thereby once again highlighting the importance of the free pre and postnatal care, clinical childbirth, and counseling provided by healthcare professionals in various sectors.

Moreover, Health care professionals are primarily governed by the Code de la Sante publique (Public Health Code). Article R4127-7 of the Code provides that a doctor may not discriminate on the basis of a patient's origins or family situation, among other things. Similarly, article R4127-305 states that a midwife must treat all patients and newborns with the same conscientiousness, regardless of origin or family situation, while article R4312-11 imposes the same nondiscrimination obligation on nurses.¹⁰³ Therefore, health care professionals of various kinds are under a legal obligation to provide a nondiscriminatory care to all patients regardless of their personal situations. In particular cases of anonymous birth, health care professionals have an obligation to report the birth of a child born to anonymous parents. Indeed, the Code Civil (Civil Code) requires that all births be declared to a civil status official (*officier de l'etat civil*) within five days of the date of birth.¹⁰⁴ If the

¹⁰² Bundesregierung.

¹⁰³ Public Health Code
<https://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006072665&dateTexte=20170621> Accessed on 07/14/2017

¹⁰⁴ Code Civil [CIVIL CODE] art 55.

parents of a newborn child are not available to declare the birth, as would be the case if a child was born anonymously, the responsibility to do so falls upon “the doctors or surgeons, midwives, health care officers, or any other person who witnessed the birth.”¹⁰⁵

Table 1. The Number of Children born to “*Accouchement sous x*” & Foundlings

	Children “nés sous X” and foundlings ^(a,b)	Wards of the state either “nés sous X” or foundlings ^(c)		
		Total ^(d)	of which	
			Mother asked for her identity to remain secret	Foundlings
2001	769	719	691	28
2002	762	–	–	–
2003	684	599	582	17
2004	705	–	–	–
2005	588	540	532	8
2006		555	538	17
2007		584	581	3
2008		606	598	8
2009		667	664	3

^(a) The grouping of foundlings and children “nés sous X” is justified because in both cases filiation was not established or known.

^(b) Including children handed over to an OAA.

^(c) Only children accepted as wards of the state.

^(d) Two *départements* missing for 2001.

Sources: INSEE and civil records for (a, b); DGAS up to 2003; ONED since 2005 (c).

<https://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006070721> Accessed on 07/14/2017

¹⁰⁵ *Ibid.* Art. 56

C. The United States

1. History and Culture

According to the United States Department of Health and Human Services, 105 infants were found abandoned in public places across America in 1998. Out of 105 abandoned infants, approximately one-third failed to survive.¹⁰⁶ Almost 20 years later, United States still shows a high rate of non-marital cohabitation and births. According to findings of National Health Statistics Report conducted during 2006-2010, 48 % of women cohabited as a first civil union as compared to 23 % who married as a first civil union.¹⁰⁷ Such is an indication that in the U.S., most women who marry for the first time cohabit first. Public opinion research also supports the given claim that cohabitation has become increasingly common among U.S. adults. Americans are now becoming more accepting of unmarried couples than in the past. In 2008, the number of nonmarital births reached a record high with 1,726,566 births to unmarried women. Overall, nonmarital births have risen 17 fold from 1940 to 2013.¹⁰⁸ Because the overall marital birth rate has been decreasing over time, the regulations or preventions for nonmarital births would now have to “do so at

¹⁰⁶ Laura K Lacci, "Statistically Speaking: Can Safe Haven Legislation Succeed without Education?," *Children's Legal Rights* 26, no. 4 (2006).

¹⁰⁷ C. E. Copen, K. Daniels, and W. D. Mosher, "First Premarital Cohabitation in the United States: 2006-2010 National Survey of Family Growth," *Natl Health Stat Report*, no. 64 (2013). P. 3

¹⁰⁸ Carmen Solomon-Fears, "Nonmarital Births: An Overview," ed. Social Policy (Congressional Research Service 2014). Pg. 6

the risk of lowering overall U.S. fertility that has been hovering near replacement levels.”¹⁰⁹ In accordance with the increase in pre-marital cohabitation rate, recorded birth data from the National Vital Statistics report shows that the non-marital births have increased from 18% in 1980 to 40.3% in 2014¹¹⁰ indicating the fact that U.S. is continuously struggling with the high incidence of out-of-wedlock births and its related issue of infant abandonment.

With drastic changes of the social norm, economic and family dynamics, the society is already familiar with the tragic episode where the highschool girl gives birth in the public restroom only to rejoin her group of friends a few minutes later. One startling example was the case of Melissa Drexler, also known as the “prom mom.” Melisa Drexler is a United States citizen who gave birth in a public restroom during her high school prom night, deposited the newborn in a trash can, and later rejoined her classmates at the dance floor.¹¹¹ Stories like that of Melisa Drexler show that young women are often in extreme degrees of denial that killing their own infants are seen “as the only way to continue the denial and concealment of their pregnancy.” Despite unpredictable locations, the underlying interest behind these horrendous crimes is found to be often identical; the panic of child birth may overwhelm unprepared women

¹⁰⁹ L. L. Wu, "Cohort Estimates of Nonmarital Fertility for U.S. Women," *Demography* 45, no. 1 (2008).

¹¹⁰ J. A. Martin et al., "Births: Final Data for 2015," *Natl Vital Stat Rep* 66, no. 1 (2017).

¹¹¹ Lynne Marie Kohm and Thomas Scott Liverman, "Prom Mom Killers: The Impact of Blame Shift and Distorted Statistics on Punishment for Neonaticide," *Wm. & Mary J. Women & L.* 9, no. 1 (2002).

especially of younger age.¹¹² As a response to growing number of such infanticidal incidents, all of 50 states and the District of Columbia have legislated some form of a Safe Haven Law in order to provide a safer choice for mothers who are considering illegal abandonments or infanticides.

Another aspect of the infanticide to ponder is how the American society perceives the act of infanticide. The media's extensive attention on startling events of infant abandonment committed by their own mothers is often correlated with majority's inability to cope with such senseless act of violence.¹¹³ When stories of mothers committing infanticides are spread across social networks, newspapers, and flashed on tv screens, there seems to be an "inherent violat[ion] of our most cherished notions of life, safety, and trust." In one study, the author does not hesitate to state that the United States, like almost all other western countries, "differentiates murder from infanticide," often considering the infanticidal act with compassion and regarding it to be an unmanageable impulse. From such notion, it is understood that the society has an especially hard time renouncing the "prevalent and comforting stereotype that universally casts mothers as the altruistic protectors of their children."¹¹⁴ Additionally speaking, psychiatrists have identified in volumes of literature that mothers commit nearly all acts of infanticide.¹¹⁵ Such strict gender-based

¹¹² Lacci.

¹¹³ Carol Sanger, "Infant Safe Haven Laws: Legislating in the Culture of Life," *Columbia Law Review* 106, no. 4 (2006).

¹¹⁴ Michelle Oberman, "Mothers Who Kill: Coming to Terms with Modern American Infanticide," *American Criminal Law Review* 1, no. 4 (1996).

¹¹⁵ Friedman and Resnick.

specification existing in infanticide in compared to act of homicide may be a significant determinant to the female-centeredness of many states' safe haven laws. Based on the understood notion of the cultural secrecy that are infused within the group of women who commit infanticide, safe haven laws are considered a significant safety net for American culture.

2. Legal and Ethical Aspects

Today in United States, all 50 states and District Columbia participate in a legal system called Safe Haven Law¹¹⁶ where mothers can be relinquished of their parental duties, gain anonymity, not be persecuted if their child is an unharmed infant between 72 hours and 45 days old¹¹⁷ and is safely delivered at a legally designated locations such as emergency rooms and fire stations. The Safe Haven law was first enacted in Texas in 1999 when media broadcasted of an abandoned infant discovered locally and brought forth needed attention for the Safe Haven Law also known as Baby Moses Law to pass the house and senate of Texas government. When Texas passed its Safe Haven Law, other 47 states

¹¹⁶ The purpose of the Safe Haven Law is “to ensure that relinquished infants are left with persons who can provide the immediate care needed for their safety and well-being. To that end, approximately eight states require parents to relinquish their infants to a hospital. Other states designate additional entities as safe haven providers, including emergency medical services, police stations, and fire stations. In four states (Louisiana, Michigan, New Hampshire, and Vermont), emergency medical technicians responding to a 9-1-1 call may accept an infant.” <https://www.childwelfare.gov/pubPDFs/safehaven.pdf> Accessed on 03/01/2017

¹¹⁷ Except in Louisiana (60 days), Texas (60 days), South Dakota (60 days), New Mexico (90 days) and North Dakota (1 year). <https://www.childwelfare.gov/pubPDFs/safehaven.pdf> Accessed on 03/01/2017

also passed its safe haven laws within the five-year period. Almost all state legislatures were driven by an urge to reduce an amount of abandoned children and find deliverance for them. Many policy makers have attempted to find a rationale for the safe haven laws because of infants, a particularly vulnerable population, are in need of special protection due to their extreme inability to protect themselves and their greater risk of being harmed by distressed mothers. Therefore, specific concern for infants was the fundamental component of the state safe haven laws. Although all 50 states have safe haven laws, its age limits and the responsible party who may surrender a child vary. Most states limit the age of relinquished infants to 72 hours old or younger, while other states may accept infants up to one month of age.¹¹⁸ A study shows that by putting a limit on an infant's age, the law prevents mother's postpartum impulsive neonaticidal act and secure the safety of an infant because neonaticide occurs within first 24 hours of the child's life.¹¹⁹ Another restriction to the Safe Haven Law is that mother can only gain immunity if the baby is not intentionally harmed and is safely delivered or abandoned at legally designated places such as a hospital where medical attention can be accessed right away. If these qualifications are not met, she will be persecuted and charged because unlike Germany's confidential birth or France's anonymous birth, the only important drive for the Safe Haven Law is to gain the safety of an infant.

Since the mother often conceals her pregnancy from her social groups, it

¹¹⁸ Child Welfare Information Gateway, "Infant Safe Haven Laws," ed. Department of Health and Human Services (Washington DC2017).

¹¹⁹ Sanger.

is inherently difficult to determine a yearly abandonment figure.¹²⁰ However, even though the estimated number cannot declare the triumph of safe haven statutes, the figures provide an optimistic conceptualization of the Law. Meaning that even if it is almost impossible to grasp the exact number of women choosing safe relinquishment via safe haven instead of responding with violence, arguably even one case where a safe haven was taken advantage of marks its success according to the intention of the Law. But the numbers show greater rates of success.¹²¹ It is estimated that between 2001 to June of 2017, safe haven statutes saved well over 3,317 infants nationwide.¹²² In the case of the state of Illinois, the safe haven has adopted another name as an “Abandoned Newborn Infant Protection Act,” and has seen success in increased number of mothers who choose to utilize safe haven than illegal relinquishments over the years (Figure 4).¹²³

¹²⁰ Oberman.

¹²¹ Kunkel.

¹²² Save Abandoned Babies Foundation. <http://saveabandonedbabies.org/> Accessed on 03/01/2016.

¹²³ *Ibid.* <http://saveabandonedbabies.org/2015/11/17/how-many-abandoned-babies-are-saved-plus-how-illinois-law-works/> Accessed on 06/24/2017.

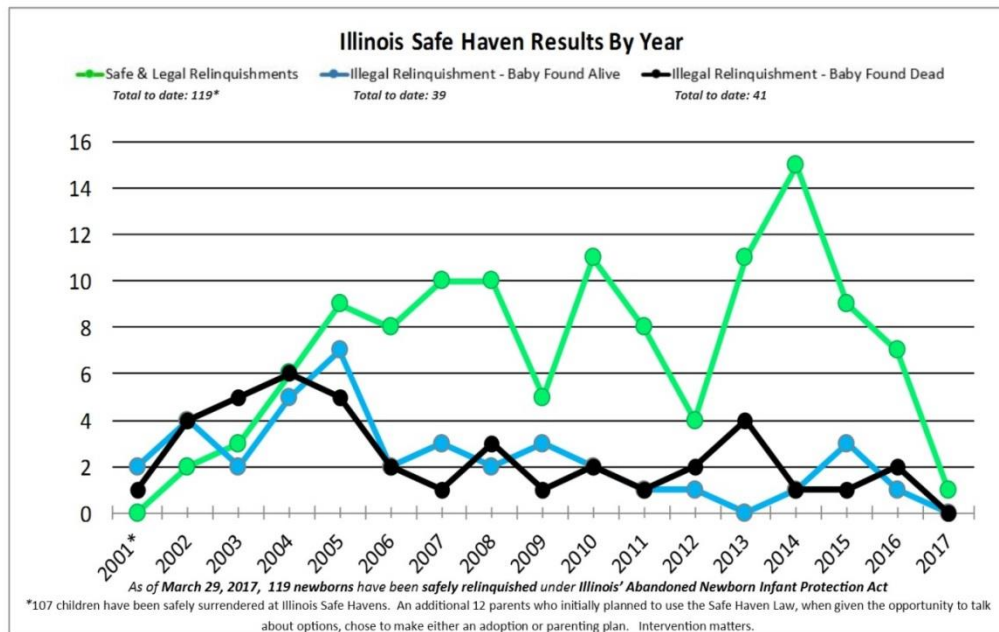


Figure 4. Illinois Safe Haven Results by Year (Source: Save Abandoned Babies Foundation)

However, because each state determines their guidelines for the infant relinquishment at the safe haven, its regulation consists of a loophole for abuses. First of all, state department decides on who may relinquish infants at a designated location, the obvious being the mother of the child but 18 states out of 50 states and District of Columbia allow others to drop off an infant while 37 states plus District Columbia grant full anonymity while leaving an infant to the authorized acceptor. 15 states and District of Columbia request medical information, only a few (4 states) provide ID bracelet for future usage in case mother changes her mind, and 16 states investigate if the child is a missing child. The flexibility of the law, therefore, can be intentionally used for a crime.

Since about 36% of states accept infants from others and only 32% investigates for a missing child, the possibility of an infant being a victim of a kidnapping is not negligible. Also, the interesting fact about the state of Georgia is that it requires the mother to provide proof of identity (as well as name and address if available).¹²⁴

The strictness of restrictions varies by each state, but if anonymity is not granted as in the case of Georgia, one may question its effectiveness as a Safe Haven Law provider since it can easily scare off the mother who fears disclosing her personal information. State of Louisiana, Nevada, New York, and Idaho allow a parent to relinquish an infant at an authorized location without personnel being present, as long as the biological parent notifies authorized personnel of the infant's location. In such case, the possibility of having an already deceased infant without proper identification of a suspect for investigation increases thus diminishes its purpose of guaranteeing the safety of an infant. Therefore, the safe haven is not without its limits. Nebraska was the most recent state to execute the Safe Haven Law. Nebraska's legislators struggled for over seven years prior to passing the law in order to "cast a spotlight on the hidden extent of family turmoil in the country and what many experts say is a shortage of respite care, counseling, and especially psychiatric services to help parents in dire need."¹²⁵ The rate of success can vary by

¹²⁴ Detailed information on Safe Haven Law for each state can be found at <https://www.childwelfare.gov/pubPDFs/safehaven.pdf> Accessed on 03/02/2017

¹²⁵ Erik Eckholm, "License to Abandon Children in a Law to Save Them," *N.Y. Times* 2008.

state¹²⁶ and its regulations, but because there is a chance of saving a life from infanticide, most states continue to uphold the Law.¹²⁷ One particular researcher refuted the preceding claim by showing that few states like New Jersey call the safe haven measures a success because there was a 63% decrease in a number of infant abandonment since the safe haven statute passed in 2000.¹²⁸

In spite of having the option to abandon a child legally without prosecution, there are still a large number of mothers who choose not to avail to the safe haven laws. The problem may lie in the lack of public campaign on the policy so the majority of mothers are ignorant of option available or it may lie on the idea that mothers who are mentally well and choose to use the safe haven laws are unlikely to be the same group who commit infanticides. In any case, a better public propaganda and preventive measures are needed.

In addition to Safe Haven Law, the first climate-controlled baby box was constructed along the wall of a local fire station in Indiana to provide a safe location for infants to be anonymously placed. Also, the 24-hour hotline is available for parents to request locations of Safe Haven, receive detailed

¹²⁶ One study identified 93 cases based upon media reports from Texas over a ten-year period (1996-2006) and found approximately 12% (n=11) of all newborns abandoned were left a safe haven site while remaining newborns (88% n=82) were abandoned illegally. S. L. Pruitt, "The Number of Illegally Abandoned and Legally Surrendered Newborns in the State of Texas, Estimated from News Stories, 1996-2006," *Child Maltreat* 13, no. 1 (2008).

¹²⁷ Ibid.

¹²⁸ K. Drescher-Burke, Krall, J., and Penick, A., "Discarded Infants and Neonaticide: A Review of the Literature," ed. National Abandoned Infants Assistance Resource Center (Berkeley, CA: University of California at Berkeley, 2004).

information on Laws and resources available including Planned Parenthood and Nurse Family Partnerships. Some view the baby box as a natural progression of the safe haven law because there are still more than 1400 children found illegally abandoned and the majority already dead.¹²⁹ It would be interesting to see how the baby box plays out in the United States as it is highly debated in the rest of the world.

3. Costs

The costs of safe haven vary by state as many states have its own regulation. For instance, as stated in the Safe Haven Promotion Task Force Report, New Jersey is well aware of the importance of “keeping the law simple to allow for a more precise public awareness message, therefore spends over 500,000 USD annually to promote public awareness about its Safe Haven Law instead on expanding the number or type of Safe Haven sites available.”¹³⁰

4. Roles of Healthcare Professionals

With an endeavor on the part of state legislators and medical professionals, the awareness amongst distressed women seeking alternative protective measures for their unwanted newborns continues to grow. Programs designed to increase

¹²⁹ ‘Indiana may be first state with ‘baby boxes’ for abandoned newborns.’ New York Post (2015) <http://nypost.com/2015/02/27/indiana-may-be-first-state-with-baby-boxes-for-abandoned-newborns/> Accessed on 06/24/2017.

¹³⁰ Safe Haven Awareness Promotion Task Force (2007), http://www.njleg.state.nj.us/OPI/Reports_to_the_Legislature/safe_haven_awareness_september_2007.pdf, Accessed on 06/24/2017.

awareness in schools, doctor's offices are in progress and education on the non-disclosure, and criminal immunity under safe haven statutes is also actively announced to inform frightened young women.¹³¹ According to the Safe Haven Promotion Task Force Report written by New Jersey, bills have proposed "requiring each board of education which operates an educational program for public school students in grades 9 through 12 to provide information on provisions of the New Jersey Safe Haven Infant Protection Act in its core curriculum content standards in comprehensive health and physical education."¹³²

Moreover, there are significant medical implications associated with enactment and management of Safe Haven. If any healthcare professionals employed by a hospital are approached by distressed mother or father seeking relinquishment of their newborns, medical professionals are responsible for managing the situation accordingly without the limit of clinical speciality. It is becoming more of an importance for healthcare professionals to become equipped with an understanding of the various underlying causes and motives of mothers choosing to publicly relinquish their infants because a negative attitude toward mothers who choose to participate in safe haven laws or a lack of knowledge about safe haven laws may impede the healthcare provider's ability to provide adequate and effective care. According to the study by

¹³¹ Oberman.

¹³² Safe Haven Promotion Task Force Report (2007)
http://www.njleg.state.nj.us/OPI/Reports_to_the_Legislature/safe_haven_awareness_september_2007.pdf Accessed on 06/24/2017.

Cesario, population of nurses presented negative outlook and lacked knowledge of the Law, the issue of infant abandonment, and the profiles of women who choose safe haven as a way to relinquish their infants. When nurses were asked to express their lack of knowledge about the infant abandonment via their narrative response to the question, "Would you like to learn more about newborn abandonment?" About 40% answered with following: 1) "would like more information on the topic because it is the responsibility of the professional nurse to have this information" or 2) "do not work in an emergency room or a maternity unit and do not need this information"¹³³

Due to its particular accessibility and importance, emergency departments have been the largest gateway for mothers to utilize the safe haven statutes. Thus, the need for better understanding of the law and hospital protocols have become increasingly critical for emergency doctors and nurses, especially the triage nurses.¹³⁴ However, because any care provider can be approached by distressed mother at the hospital, it is important to equip every health care provider with up-to-date information on safe haven laws and appropriate institutional protocols regarding the matter because not only the hospital is responsible as a safe haven provider to provide an immediate medical attention to relinquished newborns but must also assume protective custody of the newborns followed with the notifying and transferring of

¹³³ S. K. Cesario, "Nurses' Attitudes and Knowledge of Their Roles in Newborn Abandonment," *J Perinat Educ* 12, no. 2 (2003).

¹³⁴ A. Harding, "Safe Haven Laws," *J Emerg Nurs* 35, no. 4 (2009).

newborns to the local child welfare department.¹³⁵

D. Japan

1. History and Culture

Japan is certainly not immune to appalling incidents of newborns being abandoned in public bathrooms or garbage bins. As one of the few non-western countries with low non-marital birth rate, very late marriage, and lowest fertility, Japan provides an excellent opportunity to compare and evaluate the issues of infant relinquishments in its shared Confucian culture. Japan also presents a valuable opportunity to examine how unmarried mothers are playing a role in infant relinquishments, how social welfare system is shaped, and how homogeneity of the Japanese family based culture perceives non-marital births that often leads to infant relinquishments. Like Korea, the implication of delayed marriage and very low fertility for population aging and decline is of great concern. Over time, many policies have been mandated to first promote low fertility regime, by increasing the use of various means of contraceptives and then to high fertility regime, where marriage and births are desired. According to one study, Japanese show resemblance to the United States in the characteristics of cohabitation. Both countries showed strong association for lower education level and more liberal family attitudes with the prevalence of cohabitation indicating that cohabitation is serving as an alternative to marriage for those who cannot financially provide marriage. However, unlike U.S.,

¹³⁵ *Ibid.*

Japanese pre-marital conception did not result in non-marital births but an increase in bridal pregnancies.¹³⁶ The few that did not result in bridal pregnancies are left with marked disfavor.

Also, the rise in non-marital births in recent years in U.S. is the opposite of a significant decrease of non-marital births in Japan. In 1900, Japan had highest of 8.8% of non-marital births. Although U.S. was heavily based on European or Christian views on the most fundamental sociological kinship existing between opposite sex within marriage during the 1900s, Japan had a recognized concubine system until the new Civil Code appeared in 1948. According to one particular study, prior to 1948, Japanese not only separated legitimate births from illegitimate, but they had also distinguished “recognized” illegitimate from “strictly illegitimate.”¹³⁷ The recognized illegitimate were the result of non-marital births but where the father assumed legal responsibility for child rearing. Mothers of these children disappeared into the history without any record remaining. After the war, Japan considered any records of “recognized” illegitimate implied an approval of the practice of concubines, a degradation of wives, therefore the dichotomized classification was no longer used.¹³⁸ Japan, in the 1970s, was stirred with the media broadcasting continued incidences of coin-operated lockers in various airports and trains found with a

¹³⁶ James M; Iwasawa Raymo, Miho; Bumpass, Larry, "Cohabitation and Family Formation in Japan," *Demography* 46, no. 4 (2009).

¹³⁷ Shirley Foster Hartley, "The Decline of Illegitimacy in Japan," *Oxford* 18, no. 1 (1970).

¹³⁸ Although it failed to eliminate the practice entirely, “the Meiji Restoration (1868) was known to focus on the rapid economic development which based largely on family stability. Therefore, the practice of concubine was considered unacceptable.” *Ibid*, pg. 81

large number of deceased infants hidden in them.¹³⁹ Those that were discovered were considered to be the tip of the iceberg.¹⁴⁰ Incidences of infanticides appeared one after another, and when these incidents were publicized, government officials began to put countless efforts to counteract the increased number of “coin-operated-locker babies.” In 1987, special adoption system was established to bring together relinquished children with prospective parents who desperately wanted a child.¹⁴¹ However, mandated policies were insufficient to eradicate the problem and led to an introduction of an anonymous infant relinquishment facility. It has been ten years since stork’s cradle (*Kounotori no Yurikago*) was built in Jikei Hospital in Kumamoto City, Japan to prevent infanticide and infant abandonment that continue to occur even today. Within five years of its establishment, 81 children have been placed in the stork’s cradle. Modeled after German Babyklappe, the stork’s cradle is similar in its structure and functions. However, just like anywhere else, stork’s cradle too is highly debated in Japan. The attitudes regarding baby hatch is often divided in Japan, and neither opinion for or against baby hatches has been able to reach a legal policymaking process. The baby hatch study committee (Shukutoku University Professor Reiho Kashiwame et al.) convened by

¹³⁹ A. Kouno and C. F. Johnson, "Child Abuse and Neglect in Japan: Coin-Operated-Locker Babies," *Child Abuse Negl* 19, no. 1 (1995).

¹⁴⁰ K. Yoshida, "'Konotori No Yurikago' to Mikonhaha Konngaishi – German Babyklappe, Safe Haven Laws in the United States Tono Hikakukara ("Stork's Cradle," Single Mother and a Child Born out of Wedlock – from Comparison between German Babyklappes, and American Safe Haven Laws)," in *Shusei Wo Meguru Rinri- "Seizon" Heno Sentaku*, ed. H. Sakurai and G. Horita (Kyoto: Ritsumeikan University Seizongaku Study Center, 2009).

¹⁴¹ *Ibid.* Pg. 34

Kumamoto Prefecture to examine the Jikei hospital's baby hatch indicated in its interim reports that between May 10th of 2007 and March 31st of 2008, a total of seventeen children were relinquished. The majority of mothers were in their thirties and forties, 90% of the relinquished infants had siblings, and 40% of parents were "single mothers."¹⁴² Another recent study conducted by Japanese scholars presented various reasons on why thirty-two parents within two years (2011-2013) had to place their babies in the care. The reasons were following: poverty (9), unmarried (9), public image/unwillingness to enter in the family register (6), problems with a partner (6), and extramarital affair (4).¹⁴³ Its increase in unmarried portion indicates that Japan is also growing in non-marital births than before. Since Japan and Korea share similarities in its Confucius background cultures, religions, and value of socio-economic society than that of other western countries, collected data on why people use Stork's Cradle can be a helpful guide for evaluating Korea's current approach on issues regarding the baby box.

In fact, the majority of both cultures shared a similarity in considering the cradle as a necessity. When Kumamoto Nichinichi Newspaper in Japan surveyed eligible voters in Kumamoto Prefecture in 2007, 49% responded that the Cradle was necessary, 33% said they could not say while only 14.9% answered Cradle was not necessary.¹⁴⁴ Similar results were shown in Chosun

¹⁴² Yoshida.

¹⁴³ Atsushi Asai and Hiroko Ishimoto, "Should We Maintain Baby Hatches in Our Society?," *BMC Medical Ethics* 14, no. 1 (2013).

¹⁴⁴ Kumamoto nichinichi newspaper "Konotori-no-yurikako" shuzai-han ("Stork's Cradle" News Squad): Yureru inochi, messages from akachan post (Life unsettled, message from a baby

Newspaper survey in Korea, the majority of the population (86.6%, n=59) answered the baby box was protecting life thus it was a necessity while only 13.2% (n=9) said it was encouraging child abandonment thus it should be removed.¹⁴⁵ Stork's cradle in Japan and baby box in South Korea continue to subsist in the midst of these divided attitudes.

2. Legal and Ethical Aspects

Japan has also considered the unmarried mothers to be a long lying cause of the infant abandonment and infanticide.¹⁴⁶ Therefore, factors related to unmarried mothers will be thoroughly observed. First off all, In Japan, abortion is legal and available up to 21 gestational weeks and women are not required to obtain counseling prior to the procedure. With such in mind, the lack of social welfare system for single-mother families could be considered a majority of reasons why there are so few non-marital births. Although most countries abolished legal discrimination against “illegitimate” children born out of wedlock, Philippines and Japan are two countries that still hold a discriminatory law against children born out of wedlock.¹⁴⁷ A notion of “legitimacy” existed not

hatch). Tokyo: Junpo-sha; 2010. A. Asai, *Baby Hatch – What Is Evidence Determining Its Propriety* (Kumamoto: Kumamoto Nichinichi Newspaper, 2012).

¹⁴⁵ 어느 목사가 만든 ‘베이비박스’, 어떻게생각하십니까? Chosun newspaper survey poll (2011) http://forum.chosun.com/bbs.poll.view.screen?bbs_id=700100&message_id=716937
Accessed on 06/23/2017

¹⁴⁶ Yoshida.

¹⁴⁷ A notion of “legitimacy” exist in various parts of Japanese Civil Code. For instance, Article 900 (iv) in “Part 5 – Inheritance” of the Civil Code states that “the share in inheritance of a

only in various parts of Japanese Civil Code but as well as in social systems and services such as family registers (*koseki*) and resident cards that people carry daily. As a result of activists' efforts, the (no longer extant) Ministry of Home Affairs ordered all information pertaining to the parent-child relationship to be modified to only be recorded as "child."¹⁴⁸ Yoshida (2013) also states in his study that discrimination against non-marital children in everyday life is much stronger if belong to single-parent families instead of cohabiting unions. Also, the discrimination against single mother was also noted as an important aspect of rising number of infant relinquishments. Because Japanese system regards the decision to be of greater importance than rights of children, the paternity is given at any time by the government without the consent of the biological mother or the child. However, if the mother or the child would like to acknowledge paternity, they must file a compulsory lawsuit and pay the cost of DNA laboratory testing procedures.¹⁴⁹ Therefore, it is not only difficult to secure the rights of the children out of wedlock, but it is also difficult to preserve rights of unmarried mothers in Japan. Also, prejudice against non-marital pregnancy can arise problems concerning their employment before or after their pregnancies while being already discriminated on Child Rearing Allowance.¹⁵⁰ As issues concerning the lack of social welfare system make

child out of wedlock shall be one half of the share in inheritance of a child in wedlock." *Ibid.*, P. 31.

¹⁴⁸ *Ibid.*, p. 32

¹⁴⁹ *Ibid.*

¹⁵⁰ "Child Rearing Allowance was one of the most important support that "single" women could apply for. According to Hertog (2009), between 1970 and 1984, the Child Rearing

clear, Japan is certainly a society where unmarried women would resort to abortion instead of giving birth.¹⁵¹ Such claim is evident in a survey conducted by Japanese obstetricians in 2002 (91 facilities, 565 respondents) on teenage women who had abortions. When they were asked if they had wanted to give birth, 39.3% answered said “yes” while only 18.1% marked “no.”¹⁵²

3. Costs

The Stork’s Cradle is a collateral work with Medical Corporation Sei Gakkai Jiyue Hospital and is funded by the various sources of donations.¹⁵³

Allowance equal to widows’ pensions was given to both divorced and unmarried. However, in 1985, the change in the eligibility for the Allowance severely limited unmarried mothers from receiving the benefit. In order to avoid granting benefits to unmarried mothers who are in civil union, Japanese government required a detailed form concerning the information on the child’s biological father that must be signed by a community volunteer (*minseijin*) to certify her lost contact with the child’s biological father. A requirement to disclose her personal information strongly discouraged unmarried mothers from requesting the subsidy. The Allowance was, once again, revised in 1998 to lift special constraints on unmarried mothers. However, they were then faced with stricter eligibility for income-related supports. Ekaterina Hertog, *Bearing an Illegitimate Child in Japan* (Stanford, California: Stanford University Press, 2009). A report published by the National Institute of Population and Social Security Research also contains a New Child Rearing Allowance that was enforced in April 2010, but with no indication of unmarried mothers. The report states in its eligibility as following: Mothers who take custody of and bring up a child who does not live with his/her father due to the divorce between his/her parents) ...or fathers who take custody of and lives with a child who does not live with his/her mother due to the divorce between his/her parents. Aya Abe, "Social Security in Japan. " (Tokyo, Japan: National Institute of Population and Social Security Research (IPSS), 2014).

¹⁵¹ Hertog.

¹⁵² *Ibid.*

¹⁵³ Advance medical and Cordial care, Jikei Hospital http://ninshin-sos.jp/yurikago_found/#fund_frame Accessed on 07/18/2017

4. Roles of Healthcare Professionals

The roles of healthcare professionals include but not limited to operating a Stork's Cradle within the clinical setting. When the prospective Stork's Cradle user approaches the cradle site, an information packet is available to gain accurate details regarding the process of Stork's Cradle without disclosing mother's identity to any hospital staffs. When the infant is safely placed at the Stork's cradle and receives medical examination (blood test, X-ray and etc), it is then reported to the president, the hospital director, and the administrative director, responsibly by the senior nurse or the head of the ward and then to the police station of the Kumamoto city child protection center. Since its opening in 2007, 125 children have been saved by the hospital. The hospital is also actively involved in providing pregnancy counseling via phone calls, mails, and chat services. According to the interview with Jikei hospital president, the hospital received around 5,400 calls in 2015 and more than 6,500 calls in 2016.¹⁵⁴ The high number of counseling conducted at the hospital is a good indicator that a lot of Japanese parents are seeking alternative option to parenting and an extended support for these parents is urgently needed. According to the press, the shrinking size of the Japanese family is actually creating a strain on parents who are in need. While couples were able to seek help from neighbors in the past, the urbanization and atomization have severed these ties and are now turning to the government for help. According to the

¹⁵⁴ 'Kumamoto baby hatch still delivers hope 10 years on,' The Japan times (2017), <http://www.japantimes.co.jp/news/2017/04/15/national/social-issues/aftermath-quakes-kumamoto-baby-hatch-continues-offer-hope/#.WUziXWjyhPZ> Accessed on 06/24/2017.

findings, the number of consultations with child welfare offices have increased over 30 times since 1990 but the government remains passive, understaffed, and under budget.¹⁵⁵ Therefore, role of Jikei hospital, the only facility providing anonymous relinquishments, is significantly stressed.

Chapter 3. South Korea

A. History and Culture

In the excerpt, 'Facing facts' left by the executive director of the Holt International,¹⁵⁶ Rev. Louis O'Connor Jr has made a significant advancement in respect to understanding the history of infant abandonment in Korea, previously explored causes, and relevant tactics on alleviating the problems of infant abandonment. According to his findings, orphans in Korea first appeared in year 28 of the Silla Dynasty and any law mandated in 1783 during Chosun period was a response to famine and homeless issue occurred prior to 1783. During the Korean War (1950-1953), many children lost their homes and became orphans.¹⁵⁷ In the midst of war, the need for the expansion of medical facilities, refugee camps, and orphanages for the wounded and the lost was

¹⁵⁵ Japan's Parent Trap <http://content.time.com/time/world/article/0,8599,1624919,00.html>
Accessed on 07/18/2017

¹⁵⁶ Humanitarian organization and adoption agency, based in Oregon, United States, known for its role in international adoptions. Further information on Holt organization is available at <https://www.holtinternational.org/> Accessed on 06/23/2017

¹⁵⁷ Editors of 40 years history of KAVA, *40 Years History of Kava* (1952).

simply greater than the importance of finding biological origins of lost children. Therefore, the war led to the breakdown of the family system of the society in terms of conserving the essence of familial roots. Near the end of the Korean War, the number of orphanages increased exponentially from 38 in 1945 to 440 in 1953, and eventually, 69,000 orphans were living in 700 different shelters.¹⁵⁸ As a consequence, a significant number of infants were sent overseas for international adoption in the 1950s. However, unfortunately, the problem of infant abandonment did not subside even after the war and Korea have been notorious as the international adoption source ever since. According to the Ministry of Health and Welfare's reports in 1965, 7,868 homeless children were living on streets of which 6,957 children were sent to different orphanages. As shown in Figure 5, various causes of infant abandonment in 1965 were famine, family problems, parental neglect, disability, a single mother, and prostitution in order of most to least reported.¹⁵⁹

¹⁵⁸ *Ibid.*

¹⁵⁹ *Ibid.*

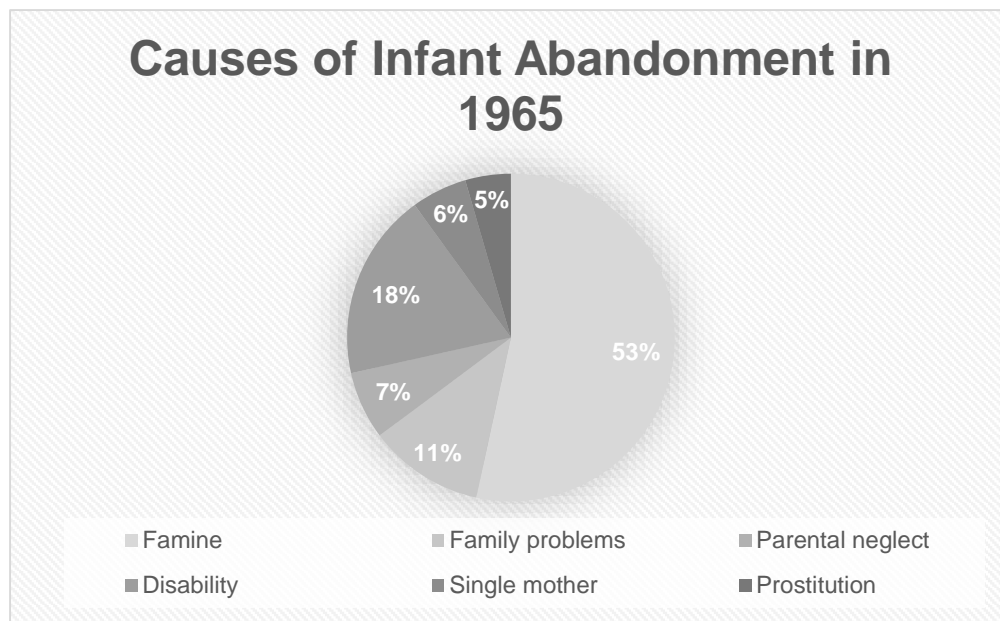


Figure 5. Causes of Infant Abandonment in 1965. (Source: KAVA)

Although the history of international adoption dates back to end of World War II as a humanitarian response to the immediate plight of children in the aftermath of crises, it is at the end of the Korean war in 1954 when the widespread practice of overseas adoption known today has started. Near the end of the war, a large number of biracial children born from fleeting military personnel and Korean women were abandoned. These children were cast as “dust of the streets” and were considered illegitimate from the Confucian society that only considered bloodline to be of importance.¹⁶⁰ As a consequence, thousands of children were exported to foreign countries. In a

¹⁶⁰ Arissa H. Oh, *To Save the Children of Korea: The Cold War Origins of International Adoption* (Stanford, CA: Stanford University Press, 2015).

book called *“To Save the Children of Korea: The Cold War Origins of International Adoption,”* a book written by a historian at Boston College, details of how Korea pioneered international adoption are given. According to the author, the original intention of the overseas adoption was to be a “race-based evacuation” to maintain the racial purity as well as a means of an economic gain.¹⁶¹ However, the exodus of children did not cease even long after the Korean War. According to Ministry of Health & Welfare statistics, calculated number of legalized overseas adoption taken place from 1958 to 2015 was 166,512. In 1985 alone, 24 children on average left Korea every day to foreign countries.¹⁶² In 2001, the government allowed adoption agencies to request 9,000 USD for an international adoption while the domestic being only 2,000 USD. The initial attempt of decreasing the international adoption by 3 to 5% has made progress but only starting in 2007, the government intervened and set a limit of 10% per year for international adoptions that actually made the number of adoptions decrease to thousands.

The heterogeneous nature of infant abandonment affects many aspects of society. Not only it raises ethical questions, but it also raises an important demographical question. Specifically speaking, the cause and effects of the relinquished infants. Today, Korea experiences an annual increase in a number of infants abandoned while rest of the Korean society grapples with low fertility

¹⁶¹ *Ibid.*

¹⁶² Korea Adoption Service (2016)
http://www.kadoption.or.kr/board/board_view.jsp?no=193&listSize=10&pageNo=1&bcode=06_1&category=%ED%86%B5%EA%B3%84 Accessed on 06/21/2017.

rate. To understand the dynamics of what seems like a two distinct issues, the factors surrounding both types of births will also be examined.

According to Organization for Economic Co-operation and Development (OECD), the total fertility rate is defined as a direct measurement of the average number of births per woman over a lifetime given current age-specific fertility rates assuming no female mortality has occurred during reproductive years.¹⁶³ According to its findings, Korea's current total fertility rate is 1.17 and ranking 220 out 224 countries according to the Central Intelligence Agency (CIA)'s publication.¹⁶⁴ Countries with worse total fertility rate than Korea are Hong Kong, Taiwan, Macau, and Singapore of which 3 of them are city countries.¹⁶⁵

Low birth rate is, however, a world wide problem. Many developed countries suffered from low birth rate starting in the 1990s. France's lowest birth rate was 1.66 in 1994 while Germany's lowest birth rate was 1.25 in 1995.¹⁶⁶ In 2005, Korea marked its lowest birth rate of 1.08, implying the fact that Korea is following the footsteps of many developed countries by a ten-year gap. Nevertheless, unlike Korea, many of the developed countries have recovered from the low birth rate at varying degrees. As a response, the Korean

¹⁶³ OECD (2017), Fertility rates (indicator). doi: 10.1787/8272fb01-en (Accessed on 19 June 2017)

¹⁶⁴ Centrail Information Agency (2016) <https://www.cia.gov/library/publications/the-world-factbook/rankorder/2127rank.html> (Accessed on 19 June 2017)

¹⁶⁵ *Ibid.*

¹⁶⁶ European Commission, "Demography Report 2015," in *Short Analytical Web Note* (Luxembourg: European Union, 2015).

government initiated 1st, 2nd, and 3rd “Plan for Ageing Society and Population” from 2006 to 2016. Despite the fact that about 100 trillion won was spent by three preceding presidencies to expand the relief program to create more labor markets, and to provide financial assistance to newlyweds with the mortgage for the sole purpose of encouraging marriage and childbirth, the birth rate of 1.24 in 2015 dropped further down to 1.17 in 2016.¹⁶⁷

The answer for both of the problems for the infant abandonment and low fertility can be found in the lack of strong social welfare system for a marginalized population. Unlike Korean society where unmarried women raising their children are called unwed mothers (*mihonmo*), Germans use the expression “Alleinerziehende,” a lone mother. Such expression indicates that German culture respects the birth rights of women regardless of their marital status. Compare to various types of aid available and cultural acceptance of unmarried mothers in Germany, Korea lacks in many appropriate and sufficient level of relief program for unmarried mothers who choose to rear children.¹⁶⁸ In a country where abortion by choice is prohibited at any gestational age, the lack of sufficient government aid can drive the unmarried mothers to have an illegal abortion or abandon their infants in times of distress.¹⁶⁹ The unavailability of the statistical data for unmarried mothers rearing children

¹⁶⁷ Naeyoung Lee, "3rd Plan for Ageing Society and Population," ed. Women's Public Health (Seoul: National Assembly Research Service, 2017).

¹⁶⁸ ok-ju Shin, "Accountability for the Past, Rights for the Future" (paper presented at the The 3rd Single Moms' Day International Conference, National Assembly Meeting Hall, Seoul, 2013).

¹⁶⁹ Kim.

shows the lack of attention given to the unmarried mothers. The first time statistical report was collected on unmarried mothers rearing children was in 2015. According to the report, 24,487 unmarried women were rearing their children, and most of them were suffering from financial difficulties and social prejudice.¹⁷⁰ Also, a study conducted by Korean Women's Development Institute showed that 89% of unmarried mothers agreed to have experienced social prejudice at some point especially when they were applying for a new job. In 2009, 93% of unmarried mothers were fired or asked to resign near the time of childbirth.¹⁷¹ According to the Constitution, the government ought to provide social guarantees for unmarried mothers and the children they are caring for because the constitutional rights of Article 10 (personal rights) and Article 17 (self-determination rights of giving birth and reproduction) are equally true for married and unmarried mothers to have the right protected by the Constitution to achieve the birthright of the protection of their lives and sustenance from the society. Therefore, the government should not only secure the constitutional right of unmarried mothers but further expand the help to provide the legal groundwork and efficient support system for unmarried mothers in order to protect them from discrimination and to guarantee their sustenance to continue their work if they choose to rear their children. In such environment, any women can deliver a child without unnecessary fear of the discrimination after the childbirth and can hope for the level of abortions and

¹⁷⁰ Statistics of Korea (2015)

http://kosis.kr/statHtml/statHtml.do?orgId=101&tblId=DT_1SI1501&conn_path=I2 Accessed on 6/20/2017

¹⁷¹ Kim.

infant relinquishment to subside.

The majority of unmarried mothers in Korean choose adoption because of economic hardships (34.4%) and social prejudice (29.8%).¹⁷² If they choose to raise their children, they often face discrimination at the workplace or even lose their job when 120,000 won (120 dollars) is all they receive each month from the government as a child support.¹⁷³ Making situations worse, if they become eligible for supplemental security, the child support they receive stops.¹⁷⁴ Therefore, the number of mothers who choose to raise their children despite the unfortunate circumstances is only a few.¹⁷⁵

The baby box at Ju-Sarang Community Church in Seoul, opened in December of 2009, operates 24 hours a day, seven days a week with staffs working on two full-time shifts supervising relinquished infants (Figure 6). If the mother is found before she leaves the sight, comprehensive counseling is provided to make sure she knows the responsibilities and consequences of the infant she is relinquishing which then appropriate resources are delivered. After an initial medical examination, infants are then transferred to Seoul Metropolitan Office Children's Welfare Center to be placed in orphanages. Recently modified, the baby box facility now operates a residential facility for unmarried mothers who cannot find a place to live and provides financial

¹⁷² Korean Institute for Health and Social Affairs (2011)
<http://repository.kihasa.re.kr:8080/handle/201002/7043> Accessed on 6/20/17

¹⁷³ *Ibid.*

¹⁷⁴ Shin.

¹⁷⁵ *Ibid.*

assistance and resources upon request followed by thorough evaluation. Profiles of those considering infant relinquishments vary. Some are afraid of facing stigmas of having nonmarital births while some are involved in extramarital affairs or are victims of rape. Others see it as an alternative to an abortion which is illegal for most cases in Korea. Unmarried mothers often resort to the facility when they have exhausted all other options.



Figure 6. Pictures of the Baby Box in Seoul

B. Legal and Ethical Aspects

The revised Special Adoption Law bill passed the National Assembly on August 4, 2011, and was implemented on August 5, 2012. Since the revision, the unforeseen negative impact of the law was apparent the in the most marginalized group of people. One aspect of the Special Adoption Law that posed the greatest problem to unmarried mothers is an intervention of the family court. According to the revised Special Adoption Law, now the biological parents must seek an adoption approval from the family court with the documented birth registration of the child. Before the revision of the law, any responsible party was able to document the birth record, therefore had increased flexibility in giving up the child, for an adoption. Some proponents of the Special Adoption Law argue that in the current family registration system, an option of requesting a “partial” disclosure exists where one can receive a document without any indication of nonmarital births or children from a previous marriage. However, it seems that only an extremely few people, including the civil servants who are responsible for processing the document, realize the existence of the partial disclosure option. Therefore, unless the applicant requests the partial disclosure, the public official unquestionably issue the complete document that discloses full information pertaining to individual privacy. Such record is also easily released to one’s partner, and other immediate family members upon request without a letter from a power of attorney. One can even access the document via an online service.¹⁷⁶

¹⁷⁶ 현소혜, "개정 「민법」상 입양과 「입양특례법」상 입양—체계정합성의 관점에서—," *한국가족법학회* (2013).

Consequently, there is a undoubtedly high risk for privacy leaks.

Korea's current Family Relationship Registration Act primarily enforces biological parents to register the child upon childbirth. Only when biological parents are unable to register, the third party will resume the responsibility for the registration. Historically, the system was used by the government to manage population demographics and collect taxes, but its antiques characteristics are now preventing baby box infants from finding new families. According to internal statistics report of the Ju-Sarang Community Church, mothers who use baby box are often found to be young, unmarried, lack social support, and of lower socioeconomic status. Most importantly, they often leave a letter with an infant arguing for the amendment of the Special Adoption Law that currently prohibits them from giving up their infants legally for an adoption.

The highlights of the amendment ("Special Adoption Law"), three conditions newly created on the birth parents who wish to place their child up for adoption, are following: 1) Birth certificate of the child to be adopted and written consent to the adoption given under Articles 12 and 13 (as stated in Article 11), 2) the consent of his/her natural parents mentioned in Article 11 shall only be obtained after one week from the date of birth of the relevant child (as stated in Article 13), and 3) biological parents must receive counseling on the various subsidies and resources. The legislative intent to reduce the number of foreign adoptions by encouraging domestic adoptions and introducing a minimum of seven days of waiting period before putting infants up for adoption is now being attributed to setting back the adoption process and creating an unintended side effect of drastically increasing the number of infant

abandonment.

Although the sole purpose of the amendment was in the interest of children, because of its obligatory birth registration process, many single mothers, reluctant in disclosing their identity, consider an abortion or abandonment of their infants thereby endangering the life of vulnerable infants. Based on unpublished internal analyses of 206 counseling reports conducted by Ju-Sarang Community Church, 50% (n=103) of the mothers stated their reason for the act of infant relinquishment is directly due to the birth registration process, indicating that in a society where legal protection for mothers to deliver anonymously fails to exist but lacks the Law to persecute mothers who utilize the baby box, many mothers resort to deliver confidentially without the medical care and relinquish their infants at the baby box.

The causes for the infant relinquishment are complex. Poverty, lack of education, teenage pregnancy, extramarital pregnancy, sexual violence, inability to proceed with birth registration, and low levels of standard care for the community all contribute to relinquishments. Physical illnesses of the infant or parents also occasionally lead to the relinquishment. Each type of infant abandonment has specific reasons, but most cases of infant relinquishment in Korea involve the interaction between financial difficulties and inability to proceed with the birth registration process.¹⁷⁷ In order to secure parental rights and child custody of unmarried mothers, the one-week waiting period was also introduced to the revision of Special Adoption Law. Unlike the past where

¹⁷⁷ Ok Ju Shin, "독일의 입법례를 중심으로 살펴본 제한적 익명출산제도의 도입 필요성에 관한 연구," [Eine Rechtsvergleichende Studie über die Einführung der begrenzten anonymen Geburt.] *Han Yang Law Review* 25, no. 4 (2014).

unmarried mothers were able to relinquish their infants any time during their pregnancies or after the childbirth, now the biological mothers have to wait one full week to gain eligibility for an adoption. The one week waiting period, however, has raised concern for many unmarried adolescent mothers. Because most of these adolescent mothers often conceal their pregnancies from immediate social groups, they are faced with increased complications in finding support when they are waiting a week to give up their children. For such reason, the welfare ministry recently released a relief policy for the unmarried biological parents' waiting period. The federal government claimed to provide the aid up to 700,000 won for unmarried parents after the child birth if either party with a child lacks a place to live or are in a distressed situation to care for their newborns. If unmarried mothers stay at one of the facilities, specifically designed for unmarried mothers, with their newborns, they will be provided with 250,000 won. If unmarried mothers receive postpartum care at their own home, they will be provided with 500,000 won and when they utilize centers instead, 700,000 won will be provided.

Along with the dire need for increased federal child support, current support laws need to be amended in order to provide the care to the most afflicted group of the population. In Korea, the Single Parent Family Act is available to unmarried mothers who chose to care for their children. If children are attending schools, they are able to receive the financial support until they are 22 years old and if children are currently living with grandparents, they are eligible to receive the support. According to the Article 3 of the Single Parent Family Support Act, biological mother or biological father at unmarried state

should not be discriminated against for employment due to pregnancy, childbirth, and child rearing. Additionally, Clause 2 of Article 5 of the Act specifically protects mothers who are living at a single mother facility even if she is not caring for her child.¹⁷⁸ However, revised Special Adoption Law prohibited adoption agencies from operating facilities for unmarried mothers and their children starting on July 1, 2015. In 2011, there were 33 facilities nationwide for unmarried mothers to reside of which 51.5% of them were operated by adoption agencies. From July of 2015, unmarried mothers were faced with increased risk of becoming homelessness.¹⁷⁹ Often unmarried mothers prefer to live in urban cities because it is more accessible to job market and easier for them to find a child care for their children while they are at work, therefore, it is urgent to build to more residential facilities for unmarried women in order to provide them with a better option than illegal infant abandonments.

Moreover, under the Single Parent Support Act, eligible unmarried mothers are able to receive the financial aid of 50,000 won to 200,000 won (50 USD to 200 USD) while the Government supports 1,050,000 won per child at facilities and 240,000 won per child at foster care.¹⁸⁰ From the current situation, the mothers who relinquish their parental duties at facilities may perceive leaving their children at facilities to be a better option for the future of their children. Therefore, the government should adjust its priority to support

¹⁷⁸ Single Parent Family Support Act, https://elaw.klri.re.kr/kor_service/lawView.do?hseq=7785&lang=ENG, Accessed on 06/24/2017.

¹⁷⁹ M.J Lee, "미혼모 자녀양육 및 자립 지원을 위한 정책과제," *Korean Women's Development Institute* (2012).

¹⁸⁰ *Ibid.*

unmarried mothers living with children first.

Another blind spot exists in the current support program for the unmarried mothers. As stated in the People's Basic Livelihood Income Act, unmarried mothers need to file all of her detailed personal information in order to qualify for the benefit. Although the protocol is justifiable in the sense of limited budget available, unmarried adolescent pregnant mothers are in a tough situation to file the benefit because they are often minors with parents which disqualifies them from applying. The Single Parent Support Act also only provides the benefit to unmarried mothers after the childbirth. Therefore, unmarried expecting mothers are not able to be admitted to residential facilities until the after the childbirth.

Although limited in number, the ineffectiveness of the current revised law is evident in studies. According to the one particular survey of the unmarried mothers, "financial difficulties" was found as the most distressing hardship (43 respondents, 62%). "Negative social attitude against unmarried mothers and their children (10 respondents, 14%)," anxiety about social discrimination (8 respondents, 12%)," "difficulties in getting jobs (5 respondents, 7%)," and "other (3 respondents, 4%)" were next in line.¹⁸¹ Considering the fact that 90.7% (573 infants) of adoptees for domestic adoption and 95.1% (509 infants) for international adoption were from unmarried mothers in 2014,¹⁸² unless there is a more effective way to provide support to

¹⁸¹ Kim.

¹⁸² Korea Adoption Services (2014), https://www.kadoption.or.kr/board/board_view.jsp?no=195&listSize=10&pageNo=1&bcode=06_1&category=%ED%86%B5%EA%B3%84, Accessed on 06/23/2017.

these distressed mothers, they will continue to seek other option to relinquish their infants as before. Adoption and the baby box being the safest of them all.

As indicated in the survey, the most vulnerable aspect of living as an unmarried mother in Korea is economic difficulties. The Korean Women's Development Institute states that 43.2% of the study population of unmarried mothers rearing children were earning less than 1,000,000 won (1000 dollars) and 21.8 % had no income.¹⁸³ The 2010 statistics from the Ministry of Gender Equality and Family also found that average monthly income of unmarried mothers living with children was 785,000 won (about 770 USD), which is much less than reported minimum living expenses of 907,000 won (about 890 USD) for a family of two. Currently, government provides subsidy of 50,000 won (about 50 USD) per month if the maternal age is above 25 years old, and the age of the child is below 5 years old, in addition to 50,000 won given to unmarried mothers who are below 130% of the minimum wage until their child turns eighteen years old. After the revision of the Single Parent Family Support Act in 2011, unmarried adolescent mothers are eligible to receive a child benefit of 150,000 won (about 145 USD) and an extra subsidy of 100,000 won (about 100 USD) if the mother is below 24 years old. Even if one sums up all of the subsidies available, it is nearly insufficient to care for children as the unmarried mother. Therefore, for the most unfortunate reason, most of the unmarried mothers end up relinquishing their infants at places like Baby Box or for an adoption.

¹⁸³ *Ibid.*

Before resorting to the baby box as the best answer, another important matter needs to be addressed. Over the years, numerous lives of abandoned children have been rescued by the baby box, but worries of violating rights of an infant are inevitable. In September of 2013, Korea's National Human Rights Council declared that baby box was not in violation of human rights of infants. However, the question of violating a child's right to know the identity of his or her biological parents by legalizing the use of baby box still arises due to the Article 7 of the 1989 UN Convention on the Rights of the Child (UNCRC) that Korea and many baby box operating countries uphold.¹⁸⁴ The Article 7 declares that "the child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents."¹⁸⁵ As stated in the Article 7, children hold the fundamental right given to them by birth regardless of distinction of any kind, such as race, color, sex, language, religion, political or other opinions, national or social origin, property, birth or other status. However, the Article 6 of UNCRC, a guarantee of the inherent right to life for children, should be considered utmost importance in order to avoid the possibility of violating children's right to life.¹⁸⁶ The baby box is currently in a legal gray area because it is not under the governmental supervision or does it

¹⁸⁴ In South Korea, UNCRC became effective since December, 23rd of 1991. United Nations Treaty Collection https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&lang=en Accessed on 06/24/2017

¹⁸⁵ The United Nation: The UN Convention on the Rights of the Child. New York, The United Nation;1989

¹⁸⁶ *Ibid.*

require annual reports to a social service in regards to child welfare. According to Shin's findings, when the National Human Rights Commission of Korea filed an appeal stating that Gwanak district office has violated human rights by noncomplying with the request of removal of the baby box, Gwanak district office refuted an appeal stating that the baby box was not in violation of Child Welfare Act Article 15.¹⁸⁷

However, according to Social Welfare Service Act Article 34 (Establishment of facilities) and Child Welfare Act Article 50 (Installation of Child Welfare Facilities), baby box does not meet the requirement¹⁸⁸ to be the social service facility and thereby fails to fulfill appropriate duties of what Child Welfare Facilities mandated by the Child Welfare Act Article 52-3 (4) demands of.¹⁸⁹ Therefore, the baby box is not granted the legal power to

¹⁸⁷ Child Welfare Act, Article 15 (protective measures): When a Mayor/Do Governor or the head of a Si/Gun/Gu finds a child subject to protection within his/her jurisdictional region, or has received a protector's request, he/she shall take the following protective measures necessary for the best interests of the child, as prescribed by Presidential Decree.

https://elaw.klri.re.kr/kor_service/lawView.do?lang=ENG&hseq=32787&joseq=JO0003000

Accessed on 06/23/2017

¹⁸⁸ Child Welfare Act, Article 34 (Establishment of Facilities): (2) If a person, other than the State or a local government, intends to establish and operate a facility, he/she shall report thereon to the head of the relevant Si/Gun/Gu, as prescribed by Ordinance of the Ministry of Health and Welfare.

https://elaw.klri.re.kr/kor_service/lawView.do?lang=ENG&hseq=32787&joseq=JO0003000

Accessed on 06/23/2017

¹⁸⁹ Child Welfare Act, Article 52 (Kinds of Child Welfare Facilities): (3-4) Protection services for abused children: Services to find, protect and treat abused children and to prevent child abuse in a specialized way.

https://elaw.klri.re.kr/kor_service/lawView.do?lang=ENG&hseq=32787&joseq=JO0003000

counsel, foster, and be involved in an adoption process. Because the district office has decided to leave the baby box in a legal gray area, the use of the baby box is not technically viewed as an illegal activity although child abandonment itself is constitutionally illegal by the Article 272 of the Criminal Act protected in the Constitution.¹⁹⁰

If the existence of baby box is granted, in the midst of its complicated legal and moral stance, because it is intended to secure the life of vulnerable infants from the infanticides, the association between infanticides and child abandonment should be examined. First of all, although common factors are shared, understanding the motives of the group of mothers who commit infanticide and group of mothers who commit infant abandonment needs to differentiate. According to psychiatric studies on neonaticides profiles, perpetrators are often unmarried women in their late teens or early 20's, lower socio-economic status and they rarely receive prenatal care for their pregnancies that they often deny or conceal.¹⁹¹ Even taking the cultural differences across the country into considerations, sex-selective abortions and differential care of newborns by gender due to a preference for male offspring do not fully explain a significant number of infanticides happening in South

Accessed on 06/23/2017

¹⁹⁰ Criminal Act, "a lineal ascendant who abandons a baby in order to avoid disgrace or for fear of not being able to bring the baby up or for some other extenuating motives, shall be punished by imprisonment for not more than two years or by a fine not exceeding three million won." <Amended by Act No. 5057, Dec. 29, 1995>
https://elaw.klri.re.kr/eng_service/lawView.do?hseq=28627&lang=ENG, Accessed on 06/24/2017.

¹⁹¹ Friedman and Resnick.

Korea (Table 2). Some have, therefore, used the findings to support the ineffectiveness of the baby box or even make an assumption that it is the media blast that has significantly increased the number of mothers drawn to the baby box, therefore, encouraging infant abandonment. The finding presented via google trend, also shown in Figure 7,¹⁹² states otherwise. Contrary to what some believe, the greatest amount of the “baby box” search was not made in 2013 when the media blast started, but actually on November of 2011, shortly after the Government has declared the revision of Special Adoption Law, indicating the fact that the media attention only recently increased people’s attention.

Table 2. The Number of Infanticide Victims

2010	2011	2012	2013	2014	2015	2016 (Approximate)
18	12	16	7	11	16	7

(Source: Police department (2017))

¹⁹² Google trend is defined as “a public web facility of Google Inc., based on Google Search, that show how often a particular search term is entered relative to the total search-volume across various regions of the world, and in various languages.”
https://en.wikipedia.org/wiki/Google_Trends Accessed on 06/24/2017

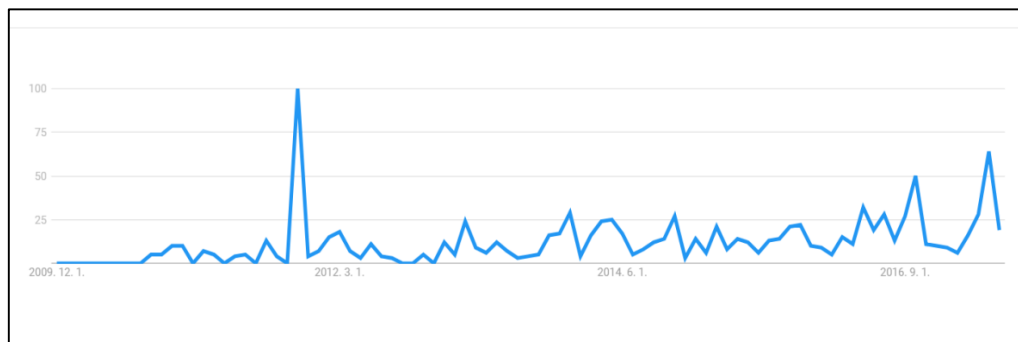


Figure 7. Google Trend of the Baby Box between September of 2009 to June of 2017. Source: Google Trend (2017)

However, one of many possibilities that have been commonly mentioned for both infant abandonment and infanticides in the literature is an unwanted pregnancy. The common theme of powerlessness, poverty, and isolation presumably overwhelmed the mother to an extent where the only motivation left for her to abandon unwanted infant. According to one particular study by Miller (1990), there is a distinction between denial and consciously lying about the pregnancy within the group who commit infanticides.¹⁹³ In pervasive denial of pregnancy, a woman is completely unaware that she is pregnant even until the delivery which leaves them in a complete shock. The concealment of the pregnancy, on the other hand, is an act of consciously concealing their pregnancy when the women are fully aware of her pregnant status. Although the latter case is difficult to be prevented, therefore the role of the baby box is critical, the first incidence can be intervened by medical professionals to help

¹⁹³ L. J. Miller, "Psychotic Denial of Pregnancy: Phenomenology and Clinical Management," *Hosp Community Psychiatry* 41, no. 11 (1990).

the mother to cope with the distress and help her to overcome the denial, therefore, preventing the infanticidal act from occurring.

According to the Ju-Sarang Community Church's reported annual status of the Baby Box (Figure 8), the number of infants accepted to the Baby Box has continually increased from 2010 to 2014 with a minimal decline in 2015. The difference in a total number of infants accepted to the Baby Box and number of infants sent to appropriate child care facilities is due to the number of infants returned to their biological parents after the counseling or those successfully adopted after the birth registration. As shown in figure 4, the number of infants returned to their biological parents or have been adopted is significantly less than those sent to child care facilities. Because unregistered infants are unable to be legally adopted, many infants lose their chance of being adopted and are instead sent to child care facilities where they will most likely spend a long waiting period before getting another opportunity of being adopted.

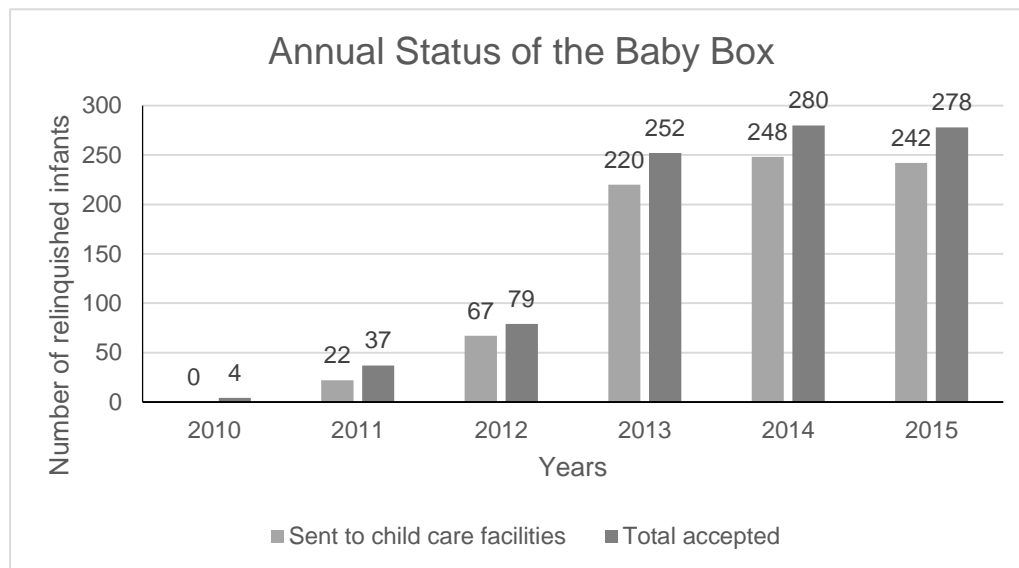


Figure 8. Annual Status of the Baby Box

(Source: Ju-Sarang Community Church)

In the case of Korea's baby box, relinquished infants are immediately reported to the local police since March of 2011. Upon the relinquishment initial check-up is done by baby box volunteers and in a case of no apparent health problems, infants are sent to the Children's Hospital in Seoul within three days for their full medical check-ups. After medical examinations, they are sent temporarily to children's welfare facilities where they will wait to be relocated to 32 different care facilities (Figure 9). Total percentage of baby box infants sent to facilities is 98%. Based on the internal statistics report of Children's welfare facilities in Seoul (2015), 613 infants were admitted by the baby box of which 602 were sent to children's care facilities, nine returned to their biological parents, one adopted, one died in 2015. Another survey

conducted at one particular children's facility reports not much different from the previous findings.¹⁹⁴ Out of 450 infants, 28 infants were adopted, 19 infants were returned to their biological parents, six infants were transferred to foster homes, and three infants died leaving 394 infants still in the care facility.¹⁹⁵ Such findings deliver an insight that the adoption rarely happens to the baby box infants. Due to existing restrictions, many infants are losing their chance of finding new homes.



Figure 9. The Process after the Infant Relinquishment at the Baby Box.

C. Costs

The cost of installation and management of the baby box is all funded via donations.

¹⁹⁴ S.H Lee, "베이비박스 아동 실태 및 돌봄지원 방안," (SEOUL FOUNDATION OF WOMEN & FAMILY, 2015).

¹⁹⁵ *Ibid.*

Chapter 4. The Roles of Healthcare Professionals

A. Background

Contrary to the decline of total birth rate, a nonmarital birth rate of unmarried women is increasing. In 2010, there was estimated number of 190,000 single women in Korea.¹⁹⁶ Ever since low birth rate issue has been a problem, the government has administered various ways to counteract yet unmarried mothers continued to not receive the proper assistance from the society when they choose to raise their children.¹⁹⁷ When unmarried women become pregnant, there is a large physiological change, sometimes conflicted between the unwanted stress of pregnancy and affection for the child. Often many experience fear, despair, and shame which induce more unstable and vulnerable state. These are particularly true for teenage mothers. Evident from the survey of unmarried mothers, which reports that 78% of population group had worse health status after the delivery than prior to the delivery, it is extremely important for unmarried mothers to have access to healthcare especially during their pregnancy and child birth. Many previous studies focused on social prejudice, psychological stress, and financial difficulties single mothers face as a socioeconomically marginalized group. However, the study of the access to healthcare during and after their pregnancy is limited. Therefore, unmarried women's adverse health status has not been thoroughly evaluated, and roles of

¹⁹⁶ Lee.

¹⁹⁷ 문은영 and 김보람, "서울시 한부모가족 생활실태 및 지원방안 연구," (SEOUL FOUNDATION OF WOMEN & FAMILY, 2010).

health care professionals have not yet been explored.

A number of critics still believe baby box or safe haven legislation falls short because it only helps a mother after she has given birth. Many experts suggest that the legislation needs to be part of a larger plan to enhance services for at-risk women and increase accessibility to counseling programs. For example, Project Cuddle was created in U.S. to address the growing epidemic of baby abandonment and during the first five and half years of the program, Project Cuddle ensured the safety of over 390 babies by working with mothers not only after their babies were born, but also frequently while the mother was still pregnant. Extensive studies on factors leading to infanticide and taking steps to address these issues through both education and psychological services is a role that all medical professionals should share.¹⁹⁸

Sex education classes should not only teach contraceptive methods, abstinence, sexually transmitted diseases, and responsibilities of parenting but also urge students of the existence of the Safe Haven Law. The understanding of the basic information regarding the Law can serve as an effective protective mechanism in times of panic and trouble. Such information can contain but not limited to the specified provisions of the state, the fact that for most of the states, parents and others are able to relinquish physical custody of the infant 72 hours old or younger at a hospital emergency room or other pre-confirmed locations without being subject to criminal prosecution for crimes relevant to homicide and infant abandonment.¹⁹⁹ For instance, although California has a law similar

¹⁹⁸ Lacci.

¹⁹⁹ Oberman.

to safe haven statutes of other states, its law is noteworthy as it officially demands public schools to advise students about the state's statutory protections. (A.B. 2817 2001-2002 Sess. (Cal.2002))²⁰⁰

One of the major obstacles to the success of the baby box is that they target mothers who may be psychologically unable to use the laws to abandon their children safely. Meyer and Oberman found that the average mother who utilizes the baby box is 19 years old, almost exclusively single, and no longer involved with the baby's father. The most startling characteristics were that almost every mother had concealed her pregnancy, had not received prenatal care, and had given birth to her infant in her own home. In many cases, the mother had been in denial about her pregnancy and may not have realized she was carrying a baby until she was in labor.²⁰¹ These characteristics affect the ability of the mothers to choose to safely abandon their children. Therefore, mothers with a high risk for nonmarital pregnancy such as cohabiting or any sexually active unmarried women should be routinely checked by their primary care physicians for any signs of pregnancy.

Many mothers, even if they are not psychologically disturbed after the birth of their child, do not know about the existence of the baby box or safe haven laws. Child-care and mental health professionals in U.S. agree that the strongest safeguard against illegal baby abandonment is education on Safe Haven legislation, in Korea's case, publicity of the baby box or the introduction

²⁰⁰ California Safe Haven Law, http://www.leginfo.ca.gov/pub/01-02/bill/asm/ab_2801-2850/ab_2817_bill_20020929_chaptered.pdf. Accessed on 01/02/2017

²⁰¹ Oberman.

of the confidential birth system. Knowledge and access to information are essential because many young pregnant women –especially those likely to commit infanticide—are extremely passive. A few states accompanied the enactment of their safe haven legislation with funding to be used for educating the public, and other states are now doing the same. Safe Haven Law was added to the Comprehensive Health Education Program, such that the law must be taught to all public school students as part of their health education classes.²⁰²

B. Demographic and birth-related characteristics of Korea in 2014-2015

Table 3 presents the data gathered from the National Birth Registration Database of 2014-2015. Demographic and birth-related characteristics of the study population show that higher percentage of both paternal ages below 20 years old belong to single women, greater proportions of single women were educated high school or below, more often primiparous, and unemployed. Such demonstrates findings that even in recent times, the higher percentage of single mothers belong to what is considered a high-risk group for the infant abandonment,²⁰³ infanticide,²⁰⁴ and adverse birth outcomes.²⁰⁵ Considering that numerous studies have been dedicated to finding risk factors of teen

²⁰² Michelle Hammond, Monica K. Miller, and Timothy Griffin, "Safe Haven Laws as Crime Control Theater," *Child Abuse & Neglect* 34, no. 7 (2010).

²⁰³ Bradley.

²⁰⁴ An.

²⁰⁵ Luo et al.

pregnancy, it is alarming to see that large population of the maternal age of below 20 years old were unmarried and were significantly associated with adverse birth outcomes.²⁰⁶ Because infants born to mothers who are less than 20 years old and greater than 35 years old are known to be at increased risk for adverse obstetric outcomes compared to those born to mothers who are between 20 to 34 years old, teenage single mothers who are shun by the society, tainted with social prejudice, and often give birth in unsanitary setting are especially at risk. To date, little is known about mechanisms behind non-marital births and their association with adverse birth outcomes. However, studies have made several reasonable explanations by which marital status can be associated with adverse obstetric outcomes.

A Study by Choi et al. indicates that the discrepancy of obstetric outcomes between married and single arises due to considerable differences in their socioeconomic status, especially for single teenage mothers.²⁰⁷ Younger the mother, worse the outcomes.²⁰⁸ Teenage pregnancy is often associated with an unwanted or unintentional pregnancy resulting in high levels of psychosocial stress that consequently affects the outcomes of birth.²⁰⁹ Ultimately, high levels of stress are common in single mothers because they often belong to the

²⁰⁶ L. Gortzak-Uzan et al., "Teenage Pregnancy: Risk Factors for Adverse Perinatal Outcome," *J Matern Fetal Med* 10, no. 6 (2001).

²⁰⁷ Yeani Choi, "Prevalence of Adverse Birth Outcomes among Unmarried Women and Married Women in Korea," (2017).

²⁰⁸ S. J. Ventura, B. E. Hamilton, and T. J. Matthews, "National and State Patterns of Teen Births in the United States, 1940-2013," *Natl Vital Stat Rep* 63, no. 4 (2014).

²⁰⁹ Holt et al.

marginalized group, excluded from the socioeconomic support,²¹⁰ emotional support,²¹¹ and most importantly, access to the health care while being susceptible to unhealthy behaviors such as smoking, alcohol, multiple sex partners, and drug abuse.²¹²

Table 3. Demographic and birth-related characteristics of the study population (n= 796,810)

Characteristics	Married, n (%) or mean (SD) (n =790,792)	Unmarried, n (%) or mean (SD) (n =6,018)	P-value
Infant Sex			
Male	402,659 (50.9)	2,841 (47.2)	0.004
Female	388,133 (49.1)	3,177 (52.8)	
Maternal Nationality			
Native	755,393 (98.7)	5,969 (99.2)	<0.001
Foreign	25,399 (3.2)	49 (0.8)	
Paternal Age (years)			
Mean	34.1 (4.3)	33.6 (5.8)	<0.001
<20	750 (0.1)	291 (4.8)	<0.001
20–29	96,449 (12.2)	1,160 (19.3)	
30–39	601,377 (76.0)	3,378 (56.1)	
≥40	92,216 (11.7)	1,189 (19.8)	
Maternal Age (years)			
Mean	31.6 (3.9)	30.5 (5.4)	<0.001
<20	2,240 (0.3)	518 (8.6)	<0.001
20–34	612,905 (77.5)	3,739 (62.1)	
≥35	301,473 (18.3)	1,761 (29.3)	
Area of Birth			

²¹⁰ K. Sullivan et al., "The Potential Contribution of Marital-Cohabitation Status to Racial, Ethnic, and Nativity Differentials in Birth Outcomes in Texas," *Matern Child Health J* 16, no. 4 (2012).

²¹¹ Bloch.

²¹² Zeitlin et al; O. M. Loto et al., "Poor Obstetric Performance of Teenagers: Is It Age- or Quality of Care-Related?," *J Obstet Gynaecol* 24, no. 4 (2004).

Metropolitan city	347,755 (44.0)	2,662 (44.2)	<0.001
Others	443,037 (56.0)	3,356 (55.8)	
Place of Birth			
Hospital	798,528 (99.1)	5,921 (98.4)	
Others	7,068 (0.9)	95 (1.6)	
Paternal Education			
College or higher	594,530 (75.4)	2,859 (48.1)	<0.001
High school or	194,076 (24.6)	3,081 (51.9)	
Maternal Education			
College or higher	601,231 (76.3)	2,946 (49.5)	<0.001
High school or	186,732 (23.7)	3,009 (50.5)	
Paternal Employment			
Manager or specialist	278,891 (35.3)	1,717 (28.5)	<0.001
Officer	201,659 (25.5)	812 (13.5)	
Service	134,327 (17.0)	1,638 (27.2)	
Blue collar	155,056 (19.6)	1,182 (19.7)	
Unemployed ^a	20,859 (2.6)	669 (11.1)	
Maternal Employment			
Manager or specialist	128,825 (16.3)	781 (13.0)	<0.001
Officer	116,176 (14.7)	571 (9.5)	
Service	45,506 (5.8)	517 (8.6)	
Blue collar	16,429 (2.0)	139 (2.3)	
Unemployed ^a	483,856 (61.2)	4,010 (66.6)	
Parity			
Primiparous	413,396 (52.3)	4,538 (75.6)	<0.001
Multiparous	376,425 (47.7)	1,464 (24.4)	

^a Unemployed: unemployed, housewife, or student
SD: Standard deviation

According to the study by Choi et al, after adjusting for birth related and socioeconomic factors, adjusted proportions for the occurrence of preterm births²¹³, low birth weight,²¹⁴ and small for gestational age²¹⁵ were

²¹³ According to World Health Organization (2014), preterm birth is defined as birth before 37 weeks of gestational age. <http://www.who.int/mediacentre/factsheets/fs363/en/Accessed> on 06/23/2017

²¹⁴ According to World Health Organization (2014), the low birth weight is defined as a birth weight of <2,500g. <http://apps.who.int/iris/bitstream/10665/43184/1/9280638327.pdf>

significantly greater in single women when compared to the married counterparts thereby confirming the high level of risks single women face in their obstetric outcomes.²¹⁶ In accordance with the previous study, the Ministry of Health and Welfare of Korea reports (2015) that approximately 3% of children in care facilities have a disability.²¹⁷ Meanwhile, another report based on 2011-2015 internal data of the Children's Hospital in Seoul stated, 6.7 % (n=47) of 698 infants relinquished by baby box had some type of a disability and 25.8% (n=180) were pre-term or low birth weight infants indicating that a higher percentage of infants with disability were relinquished at the baby box than other places. Furthermore, Children's Hospital in Seoul also indicates in its internal report that normal and healthy infants during the primary medical examinations are sometimes found with complications later.

Although the baby box is primarily serving as a first line of defense for infant abandonment issue, it lacks in providing a preventive measure to distressed pregnant mothers. In order to prevent further increase of infant abandonment, current governmental provisions on providing a financial and psychosocial assistance to a high-risk group must be re-examined, and ways to provide them with confidential birth should be evaluated. Unmarried women, a

Accessed on 06/24/2017

²¹⁵ Small for gestational age is defined as smaller than the gender specific birth weight less than the tenth percentile in the gestational age. <http://www.chop.edu/conditions-diseases/small-gestational-age> Accessed on 06/24/2017

²¹⁶ Choi.

²¹⁷ Ministry of Health and Welfare (2015) <http://www.mohw.go.kr/eng/> Accessed on 06/23/2017

high-risk group for causing infant abandonment, need to be also encouraged to raise their children by equipping them with better welfare service.

C. The Care for High Risk Pregnant Women and their Infants

The average number of prenatal care unmarried mothers received was extremely less frequent than that of married mothers. (3.27 (single) vs. 12.3 (married))²¹⁸ Unmarried mothers who lived on their own showed a negative correlation to the number of prenatal care visits compared to their counterparts. The reason being psychosocial stress and lack of access to medical information pertaining to the delivery. Within the population group, young single mothers who lived on their own often delivered their babies at emergency rooms unexpectedly. When they come to the hospital at the eleventh hour, they were often rejected by the hospital staffs largely because single pregnant women who lack prenatal care are considered a high-risk group. Also, many local clinics they visited were not prepared for the emergency delivery and equipment like an incubator to care for newborns.²¹⁹

By July 2015, more than half of single women residential facilities were closed in order to promote child rearing. In a situation where the government lacks countermeasures for the loss of facilities, it is crucial for hospitals to be actively involved in the care of the pregnant unmarried women and their newborns. To unmarried pregnant women, the hospital can be the

²¹⁸ D.W. Jang S.H. Joo, J.Y. Beak, J.Y. Lee, I.S. Shon, S.N. Kim, S.J. Cho, "A Study on Pregnancy and Social Welfare of Unmarried Mother," *Korean Journal of Obstetrics and Gynecology* 48, no. 7 (2005).

²¹⁹ *Ibid.*

greatest asset that secures the safety of their health during the pregnancy and delivery. However, the current system fails to invite these women to receive essential benefits of medicine. It is urgent that government and local hospitals cooperate to publicize the importance of prenatal care, offer anonymous counseling, and to deliver financial assistance to those who are considered a high-risk group. A Currently married group of women receive some financial assistance from the government upon the submission of the document confirming their pregnancies. However, those unaware of their pregnancies or missed their prenatal care check-ups are unable to receive any financial assistance for clinic visits or cost of delivery. To accommodate the cost individual hospital pays to care for abandoned infants and high risk single pregnant women, the government must initiate a special assistance program that will facilitate the involvement of other hospitals.

The critical role healthcare professionals play in securing the safety of pregnant women, and their infants are also evident in the low incidence of infant mortality rate of Japan. Although the prevalence of low birth weight infant is higher in Japan, the infant mortality rate is lower than Korea. While many scholars attribute the negative correlation to Japan's sophisticated levels of pre and post-natal care to all groups of pregnant women, a recent Korea press reports that the bill that requires medical doctors, specifically obstetricians, to directly report birth registration are under review in Korea. If the bill passes, more unmarried mothers would be reluctant to not only receive pre or postnatal care but refrain from giving birth in any clinical setting.²²⁰ The increase in a

²²⁰ 산부인과 의사가 지자체에 출생증명서를 보내라?

number of infants with a high risk of poor obstetric outcomes in Korea can only be alleviated by the medical professionals' earliest possible interventions. Because the increased levels of teenage pregnancy often lead to an increase in stillbirth and infant mortality caused by infant respiratory distress syndrome, congenital heart defects, and sudden infant death syndrome, an earliest prenatal checkup is vital. For instance, in stillbirth, preconditions appeared during the delivery are significantly related to its incidence rate. When considering the fact that obstetric outcomes of primipara women affect subsequent obstetric outcomes, medical assistance for teenage pregnant women in regards to providing pre and post-natal care and delivery in the clinical setting should be encouraged without social prejudice.

Medical professionals in Children's Hospital in Seoul assert that the increase in abandonment of infants is largely due to the amendment of the Special Adoptions Law and because there is an outgrowth of relinquished infants, initial treatment measures are urgently needed. Since most of the relinquished children are newborns, personalized care for them is especially necessary as not all hospital facilities are equipped to provide adequate care for them. Based on the 2015 clinical reports of the Children's Hospital in Seoul, 71% of infants were treated for jaundice and hypothermia, 14% were treated for different congenital defects, and another 14% were treated for cerebral palsy. By September of 2014, there were also 129 infants requiring the care at the various facilities for the operations on the heart, cleft palate, and limb malformations indicating that the relinquished infant care is in dire need of reform

and the imperative need exists for the involvement of other health care facilities.

Moreover, the financial assistance for the clinical care at the Children's Hospital in Seoul is extremely short on budget. In 2015, 133 cases, totaling up to 16,941 thousand won, of financial assistance were given in addition to 10,181 thousand won spent for the transfer to different hospitals and 6,780 thousand won used to support other care facilities. The government support and donations are simply not enough to cover all expenditure. Many private care facilities avoid caring for relinquished infants for this reason, and to provide the specialized care relinquished infants often need, active government involvement is unavoidable. The need for relinquished infant care reform is indisputable *ad ver cun diam*.

D. Who should health care professionals help the most?

Due to very little information found on the profiles of women who may utilize confidential birth in Korea, any insights found in German confidential birth system can serve as guidance in employing the confidential birth in Korea. One of the German scholars showed that when hospitals were requested to determine the target recipient when introducing a provision for confidential birth, the results showed that the health care professionals expected to reach a group of women presenting following characteristics:²²¹

- 1) Pregnant women in extreme distraught
- 2) Women indicating a plan to abandon or kill their infants

²²¹ Khun.

- 3) Expectant mothers wishing to have an abortion
- 4) Women in denial of their pregnancies
- 5) Pregnant women with no outlook for the future
- 6) Any women seeking for nondisclosure.

German health providers regarded the Babyklappen as a second-best solution and considered a confidential birth to be a better way of rendering assistance.²²² Some also state that a high number of women disclosed their identity during the course of counseling although changing mother's decision to remain anonymous is not easily achieved. The example of the St. Anna's Hospital in Herne, which has practiced anonymous birth since 2000, can be a guideline for the future practice of confidential birth. The objective of the confidential birth is to provide any women in distress with appropriate counseling, medical advice, and subject to relevant medical practice.²²³

The following is recommended approach:

- 1) Arrival and counseling at the maternity clinic
- 2) Medical examination
- 3) Psychosocial counseling
- 4) The delivery and post-partum care
- 5) The placement of infants with prospective adoptive parents with the help of the hospital's social worker and the federal youth welfare office

²²² SterniPark, "Die Babyklappe Klappt Auch Im Neuneunten Jahr," *Pressemitteilung vom* (2008).

²²³ Neuerburg.

- 6) Mothers can have at least eight weeks and up to a year to invalidate their decision because it takes about a year for the adoption to be finalized at the local court
- 7) Notification of the confidential birth to the registry office
- 8) Mother who practiced anonymous birth is presented with a questionnaire with a minimum of information on biological parents and reasons for the decision

Retrospective reviews of infant abandonment cases have shown associations between young mothers who often concealed their pregnancies and experienced panicked deliveries that could both put the life of a newborn and the mother in jeopardy. The baby box, although altruistic in its purpose, fails to provide preventive measures prior to the delivery. If the baby box is the only safety net for the marginalized group of unmarried women, they would have to maintain pregnancy without a consultation, prenatal care, and an option for a safe delivery under medical professional's supervision thereby risking the life of a mother and her child.

Since prevention of infanticides are what baby boxes are implemented for, the task should be shared with healthcare professionals. If infants are born in unsanitary settings and are left in the baby box, the medical information pertaining to self and of the family history is often absent when infants are found. Without the baby's medical background or the parents, the delivery of the necessary medical treatment will be delayed, and hospital staff will also have no idea if the newborn had been exposed to if any, HIV, drugs, alcohol or

any other health-related concerns. Previous studies have shown the effectiveness of ‘anonymous delivery’ in decreasing rates of neonaticide by more than half in Austria once women were allowed access to free antenatal care and anonymous birth in a hospital.²²⁴ Without any significant changes in socioeconomic changes in Austria, the incidence of neonaticide decreased from 7.2 per 100,000 births²²⁵ prior to the implementation of the law to 3.1 per 100,000 births²²⁶ while data from Finland and Sweden²²⁷ showed no such change over the same period. The use of baby hatches has also been drastically low compared to the use of anonymous birth as there were only three newborns left in baby hatches per year while there are about thirty to forty cases of anonymous birth a year. Because infanticide is usually a result of unwanted pregnancy, and a resulting denial of that pregnancy, primary care physicians need to be more aware of the women at risk for denial of pregnancy and commission of neonaticide.²²⁸ Whenever primary physician performs differential diagnosis, he should be aware of the possibility of denial of pregnancy when young women are presenting with complaints of nausea, weight gain, and any other abdominal symptoms.

²²⁴ Claudia M. Klier et al., "Is the Introduction of Anonymous Delivery Associated with a Reduction of High Neonaticide Rates in Austria? A Retrospective Study," *BJOG : an international journal of obstetrics and gynaecology* 120, no. 4 (2013).

²²⁵ From 1991-2001.

²²⁶ From 2002-2009.

²²⁷ Finland and Sweden have a register for neonaticide but lack in anonymous delivery law.

²²⁸ Friedman and Resnick.

Also, if the baby box facility is needed as a last resort, it should be within the hospital facility like many safe haven locations of United States to minimize the time between the abandonment and the screening of a physician. Baby box volunteers may have a minimal knowledge of health related warning signs infant may display, but if primary screening examination is only performed by non-healthcare professionals with a naked eye, a greater chance of missing a critical sign that puts an infant in danger prevails. Moreover, studies by De Bortoli et. al (2013) shows that younger women are at increased risk for the infanticidal act for following reasons. Younger women often lack information on pregnancy and child birth and therefore disregard prenatal care. When the prenatal care or medical examinations are absent, the labor is usually followed with a high level of panic and often takes them as a shock.²²⁹ The feelings of extreme anxiety peaks and results in the newborn's death.²³⁰ Statistics show that 95% of infants killed during the first 24 hours are born outside the hospital with most born at home (71%) often in the bathroom²³¹ and often mothers are under the impression that the newborn is already dead from the birth.²³² Therefore, it is of significant importance for prenatal healthcare

²²⁹ Lillian De Bortoli, Jan Coles, and Mairead Dolan, "A Review of Maternal Neonaticide: A Need for Further Research Supporting Evidence-Based Prevention in Australia," *Child Abuse Review* 22, no. 5 (2013).

²³⁰ C. Bonnet, "Adoption at Birth: Prevention against Abandonment or Neonaticide," *Child Abuse Negl* 17, no. 4 (1993).

²³¹ M. D. Overpeck et al., "Risk Factors for Infant Homicide in the United States," *N Engl J Med* 339, no. 17 (1998).

²³² H. Putkonen et al., "Neonaticides May Be More Preventable and Heterogeneous Than Previously Thought - Neonaticides in Finland 1980-2000," *Arch Womens Ment Health* 10, no. 1 (2007).

professionals to be aware of the risk factors because even if expectant women may avoid prenatal care, they can consult with doctors for a variety of non-pregnancy related medical reasons.²³³ Also obstetricians, particularly, need to screen postpartum women for postpartum depression and psychosis that markedly increase the incidence of filicide.²³⁴ For psychiatrists, diagnosing filicidal patients and guiding her in treatment and risk managements will be crucial. Also, clinicians have a primary duty to report suspicion of child abuse and endangered children if applicable and offer to counsel to those who are in need, therefore, it will serve as a significant preventive method.

E. Importance of counseling and Education

The importance of counseling is again highlighted in the example of Germany's new confidential law where it is mandatory for a professional to deliver counseling to pregnant women before she makes her decision. If the counseling is acted by non-professional (regardless of his or her altruistic method), it would be not as beneficial as counseling completed by a health professional. Moreover, if those who commit infanticide are indeed different from those who abandoned babies at the baby box, then roles of healthcare professionals are even crucial in maternal and fetal care. Although it is frequent among mothers who commit filicides, premorbid major mental disorders are relatively less common in infanticides.²³⁵ However, the timing of neonaticide (occur on the

²³³ Bortoli, Coles, and Dolan.

²³⁴ Friedman and Resnick.

²³⁵ S. H. Friedman and J. B. Friedman, "Parents Who Kill Their Children," *Pediatr Rev* 31, no.

first day of life) is before the usual onset of postpartum psychosis. Even if it is less common with neonaticides, 16% to 29 % of mothers commit suicide after maternal filicides.²³⁶ Since women are mostly unaware of their pregnancy or are in denial when committing neonaticides or infanticides, physicians should be more attuned to deliver appropriate care whenever he or she thinks there is an elevated risk for neonaticide.²³⁷ As Friedmans' study showed, the possibility of denial should be considered in the differential diagnosis of young women presented with complaints of "nausea, weight gain, or abdominal symptoms whether or not they report amenorrhea."²³⁸ Niefert and Bourgeois have urged, "If we are fortunate enough to identify these women before delivery, it is imperative that intensive counseling is arranged."²³⁹

The sex-education is particularly important for unmarried pregnant adolescents. Although unmarried adolescent mothers comprise only a small portion, it is significantly important to address the risk factors adolescent mothers face. An adolescent sexual behavior and pregnancies are considered a taboo in Korea. Pregnant adolescents are publicly stigmatized and bullied by their peers, shun by their teachers, and often by their family members. Therefore, pregnant adolescents lack a vital support system, often endure

2 (2010).

²³⁶ MK; Marzuk Nock, PM, "Murder-Suicide: Phenomenology and Clinical Implications," *Jacobs DG (3d) Guide to suicide assessment and intervention* (1999).

²³⁷ Miller.

²³⁸ Friedman and Resnick.

²³⁹ P. L. Niefert and J. A. Bourgeois, "Denial of Pregnancy: A Case Study and Literature Review," *Mil Med* 165, no. 7 (2000).

prejudice and discrimination in solitude. Although there have been some progressive movements to promote the education and health of pregnant adolescents, adolescent mothers, and their children, such as attempts made by National Human Rights Commission of South Korea in 2010 (National Human Rights Commission of South Korea 2010b), to grant pregnant adolescents' access to education, medical, and other social services, little change has been made to date. The government also made an extra effort to increase the public awareness. However, for now, it is hard to observe the significant improvements in public awareness and attitude. In order to stop the “silent cry” of adolescent mothers and their children in Korea, there are a few advisory remarks. First, preventive measures regarding adolescent pregnancy should be initiated in public sectors such as schools but also in the family level as well. As the studies of sexual education showed, many minors report the primary source of sexual knowledge to be from their parents and that adolescents receive positive influence when their parents communicate with adolescents on healthy sexual behaviors. Therefore, an increased effort should be directed toward the education of all members of the family including the parents to increase the positive outcomes of health education. Second, the attempts to increase public awareness of young pregnant women and unmarried mothers should be continued despite the passive change. While the media broadcasts the unfortunate circumstances of young unmarried mothers, the overall public perceptions have not drastically changed. The continued effort to increase the awareness is crucial because of the discrimination and prejudice unmarried mothers, especially adolescent mothers, face oftentimes result in adoption,

abortion, or an abandonment of their infants, which can result in the death of infants. Lastly, a vast amount of help should be directed to meet unmarried mothers' medical needs because most unmarried pregnant mothers are usually not financially equipped to provide for themselves and lack the social system to receive sufficient amount of help. Given these circumstances, it is likely that many unmarried mothers do not receive recommended amount of prenatal care and other important services that any prospective mother should receive therefore inevitably risking their health as well as their infant's chance of survival.

Health teachers at schools should also partake a role in this issue by teaching a thorough sex education to all grades with specific adjustments for each grade level. The education must target junior high or high school students as they are at greater risk for teenage pregnancy and infant abandonment. Also, abstinence, birth control methods, and contraceptive usage should be taught and discussed openly so students can be educated about safe sex. If there is a pregnant teenager, appropriate care must also be delivered because research showed that the presence of visiting nurse (in Korea's case, a school nurse) during a pregnancy of a teenage girl was effective in decreasing the incidence of neglect and abuse as well as substance abuse.²⁴⁰

²⁴⁰ Julie A. Quinlivan and Sharon F. Evans, "Teenage Antenatal Clinics May Reduce the Rate of Preterm Birth: A Prospective Study," *BJOG: An International Journal of Obstetrics & Gynaecology* 111, no. 6 (2004).

Chapter 5. Ethical Evaluation

For a long period, there have been frequent incidences of where biological parents abandon their infants at the local child care facilities or orphanages. Article 17, clause 8 of the Children's Welfare Act considers all behaviors of such as an active act of infant abandonment. Here, infant abandonment is defined as "anonymously abandoning biological children at any places of choice including the child care facilities thereby relinquishing parental responsibilities of providing protection and care." For such reason, Ministry of Health and Welfare considered all infants accepted to baby box as abandoned and included into the annual statistical report of infant abandonment (Figure 10).

Law enforcement authorities' view of the "narrow meaning of infant abandonment," however, is an act of "neglecting infants at places strictly without supervision or care thereby increasing the chance or causing adverse risks to the health of infants." Often when biological parents decide to relinquish their parental duties, infants are abandoned at deserted and hidden places including but not limited to subway lockers, mountainside, public restroom, and trashcans. Because all acts of neglect, regardless of the reason, is detrimental to infant life, law officials have considered such act as a crime to be persecuted. Therefore, the narrow meaning of infant abandonment does not include infants relinquished at the baby box. For this reason, police records of infant abandonment only include the number of infants found at elsewhere (Figure 11). All things considered, the baby box has significantly decreased the narrow meaning of infant abandonment numbers thereby also decreasing the

pernicious risk to their health.²⁴¹

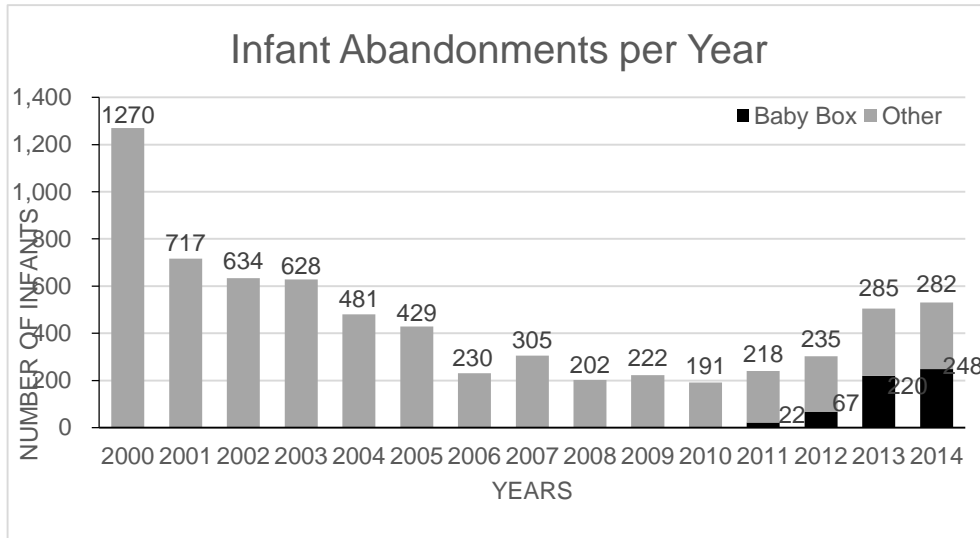


Figure 10. Infant Abandonments per Year

(Source: Ministry of Health and Welfare)

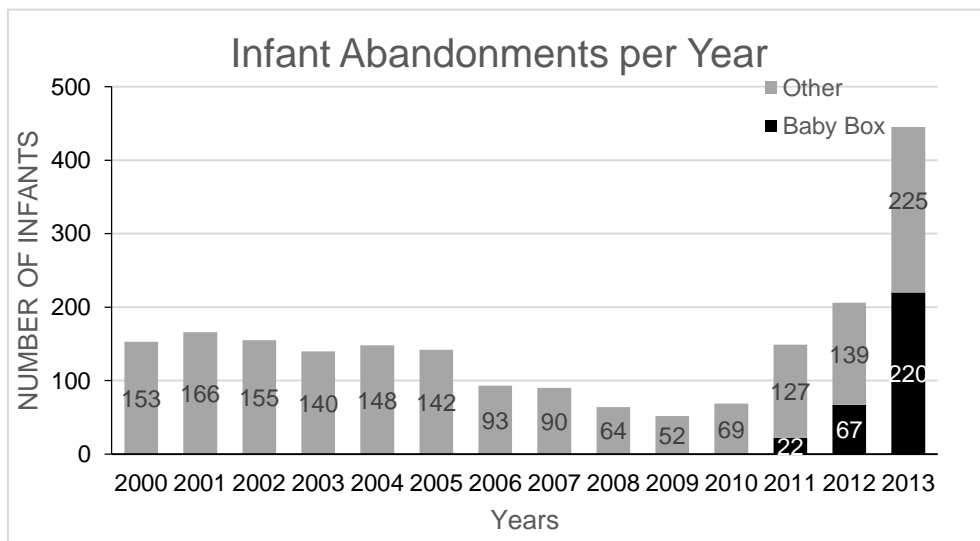


Figure 11. Infant Abandonments per Year

(Source: Police Department)

²⁴¹ The Baby Box internal report.

In the conflicted situation such as infant relinquishment, several factors of the provision of anonymous delivery collide. The first part of the evaluation is considered with the guaranty of the safety of the infants whose lives might otherwise be threatened survive and receive the necessary medical help. The second is to help distressed women whose existential situation may be worsened by cultural restraints whereby the unmarried women feel it advisable to hide their pregnancies from immediate social networks. It is important to note that children's right to know his origin is not considered a less significant value here but rather a subjective value that is dependent upon infant's initial survival. Although some studies concerning the psychodynamic situation of women who commit infanticides cast doubt on the effect of the anonymous delivery because there has not been a reported case in which the mother would have committed infanticides if the anonymous relinquishment had not existed. However, the nature of the matter is simply unable to be answered empirically with accuracy meaning that infants who have been safely relinquished at appropriate facilities would have also been victims of infanticides if these establishments were absent. For this reason, the ethical compromise must be sought in order of fundamental priority.

Without getting involved with issues regarding the infanticide or an abortion since both are considered illegal in Korea, current anonymous relinquishment existing in several countries attempt to provide the basic help with a view to protecting infants from unjust violations of the right to life. If the existence of the concrete risk has to be proven prior to the help, the obligation as a health provider to protect lives of infants threatened with an abandonment

or extreme neglect is also considered not a moral imperative but a choice. In this case, the choice lies between intervening to save infant's life from a predictive basis of a real threat to infant's life and health and remaining as a bystander to observe further on the concrete risk existing in an individual case. According to this view, the consequences of a bystander are greater than the alternative choice, and therefore the priority is inclined to the intrinsic object expressed by life.

If the baby box is compared with the provision of confidential birth in terms of the effectiveness in its treatment, the conflict of objectives and an important moral distinction emerges. Although both types of facilities target the marginalized population group of distressed women, confidential birth includes to the possibility of counseling and immediate medical attention if needed. The counseling prior to the birth would allow the mother to build a trusting relationship with the counselor thereby creating an environment where the mother who wishes to remain anonymous in respect to her social group might be better prepared to declare her decision. Also, the medical attendance for mother and the infant given at the medical center should be treated differently than the situation where the infant is left in the baby box. Although the baby box in Korea has evolved over the years and now engage in extensive counseling whenever possible, the counseling interview given prior to the confidential birth allow the child's right to know his origin to have a greater prospects of success if the mother identifies herself by name or pseudonym created by herself in a counseling interview, so that the child can subsequently have access to the birth data that he can later make contact with his parents.

As the data from the German providers of babyklappen and other facilities of anonymous infant relinquishment shows, many women remain unreached by the official assistance services. It is evident from the German system that although independent sector and state institution cooperate to achieve improved services for existing services, there will still be a number of women who will not find their way to the government operating facilities because they are afraid of disclosing their identities.²⁴² To these distressed women, the availability of the baby box may be the last resort, giving them an alternative choice to recklessly abandoning their children. In the cases where infants have been relinquished anonymously, no one is able to determine how their fate would have been altered without this provision. For such reason, the provisional toleration can only be acceptable in spite of the ethical and legal arguments that have been expressed. Since the possibility of securing lives and health of infants vulnerable in times of extreme distress by the existence of the anonymous relinquishment facilities like the baby box, and since the current legislation regarded to the Special Adoptions Law serve as a contributing factor in increasing the number of relinquished infants at the baby box can be regarded as in itself problematic, the availability of the baby box can be tolerated as an “ultima ratio” even without a legal foundation. However, in the future, a sanctioned basis might have the desirable consequences of an improving the current status of anonymous infant relinquishment to the safer system as the current one is not perfect and only secures the safety of the infant and neglects

²⁴² Ethikrat.

the mother. It could also be further explained in the establishment of confidential birth where both the mother and the infant will be granted an equal right and the care in distressed situations. Until such system is provided to enhance maternal and child healthcare, the government should authorize the baby box to be closed down only in the event of concrete evidence of abuse.

While infant abandonment is a shocking scandal, it is not a new phenomenon. For instance, almost 38% of newborns in one Boliian village were killed by their mothers due to the war and poverty during the three year period of the 1930s. Such historical evidence hint that the varying degrees of societal circumstances which the mothers are confined in may affect their decisions on the fate of their newborns. The fact that current safe haven laws, baby box, anonymous birth, and confidential birth generally continue to be directed at young mothers may be due to the fact that younger women tend to have a more difficulty coping with the distressed situations. According to one particular finding, the traditional convention of the “maternal instinct” that forms a rather tight connection between the biological mother and the newborn, regardless of her conception of her pregnancy, ceases to exist.²⁴³ Such is also an indication that the longing to nurture is not an inherent behavior but originates in the preparation and the individual desire to be a caretaking mother figure to the infant. By presenting an alternative option for distressed mothers to anonymously relinquish their infants in an authorized baby box, they are able to be relieved of fear and helplessness they feel toward themselves and their newborns in difficult circumstances. As studied before, women may relinquish

²⁴³ Susan Caba, *She Loves Me, She Loves Me Not*, (1999).

their infants for a various cause, many of which they have no control over, including but not limited to a breakdown of a relationship with a biological father of their infants, financial difficulties, or in Korea' case, nonmarital pregnancies. However, despite the varying causes, the infant abandonment problem is a much greater social issue that goes beyond the scope of mothers leaving their infants at an authorized location to be put up for adoption. In the case of baby box, infants seldom find adoptive families. Therefore, women should not be solely burdened with the criticism for choosing an alternative designed to protect lives of newborns and be forced to disclose their private information in the process. In conclusion, it seems clear that as societal constraints on women continues to increase, any constitutional rights granting women's freedom of choice hang alarmingly in the balance especially in countries where there is strict prohibition on certain reproductive rights, the confidential birth may come to have an even more critical role in saving lives of infants.

Chapter 6. Discussion & Conclusion

Although infant abandonment has often occurred in primitive and contemporary societies, very little is known of the causes, policies that presumably affect the situation, and consequences related to the issue. Despite the historical and literature evidence, and the strong adversity elicited toward abandonment,²⁴⁴ academic interest is scarce and offers very little insight on the aspect. Because the abandonment occurs for various motivations, implications of and risk factors for such act are also considered diverse and dependent upon the historical, sociocultural, legal, and ethical norms specific to geographic regions. Moreover, because their consequential effects vastly differ, those who commit infanticide or abandon their infants in an unidentifiable location are deliberately treated differently than those who utilize the baby box system. Although, profiles of those who take advantage of babyklappen, anonymous birth, confidential birth, safe haven, or baby box are rarely identified, it is known from the study that drug-associated abandonments were frequently observed in U.S.,²⁴⁵ where rates of addiction in abandoned infants were high while nonmarital births were highly related to notoriously increased number of adoption present in Korea.

According to the World Population Prospects, 15% of world populations

²⁴⁴ M. Abedin, M. Young, and M. R. Beeram, "Infant Abandonment: Prevalence, Risk Factors, and Cost Analysis," *Am J Dis Child* 147, no. 7 (1993).

²⁴⁵ National Abandoned Infants Assistance Resource Center. Expediting permanency for abandoned infants: guidelines for state policies and procedures; 2002.
http://www.aia.berkeley.edu/media/pdf/expediting_permanency.pdf Accessed on 07/13/2017

of 21 million births were nonmarital births. However, the average of 21 million births was not evenly dispersed. One extreme was countries like Japan, China, and Korea where the proportions of nonmarital births were equal to or less than 2%. These countries often carried strong social disapproval, penalties or even punishments whereas other countries that had the majority of births occur out of wedlock, showed more support for these nonmarital births. France, for instance, delivers federal support that other countries can only dream of. As the cultural dynamics shifts, so are the perception of marriage and family structure. Marriage became more trivial than before especially for the younger generation in many countries, mainly because women are now less financially dependent upon spouses due to their increased career activities and because there is a growth in demand for cohabitation prior to marriage or without marriage.

Korean survey conducted from 2008 to 2016 also shows the change in attitudes as the majority (61.7%) of adolescent population group agreed on cohabitation without marriage.²⁴⁶ Such social transition created universal challenges for many societies but some countries better adapted to the change than others. As previously studied, many western countries have acknowledged the significant changes and conformed to the new transition by providing government assistance such as PACS to grant unmarried women to have equal rights to married women during pregnancies and childbirth. Thus, in France and Germany, marriage is no longer considered an only acceptable institution for childbearing. However, in Korea, struggling with its Confucius remnants,

²⁴⁶ Daily Hankook Newspaper (2017).
<http://daily.hankooki.com/lpage/society/201704/dh20170418134349137780.htm> Accessed on 06/21/2017.

unmarried mothers continue to lack sufficient government support to rear children and often face with stigmatization. Therefore, unmarried Korean women are at increased risk for infant relinquishments when pregnant, evidenced by a large number of infants relinquished at the baby box. Irrespective of the views and government policies, nonmarital births are socioeconomically disadvantaged and are void of receiving the necessary means to secure the granted right to well-being.

Looking further into its undoubtedly high incidence of relinquishments at the baby box calls for a revision of Special Adoptions Law. Although children relinquished at the Germany's babyklappe are equally given the necessary attention and support as those raised by their biological parents, relinquished children at the Korea's baby box are prohibited from finding their homes solely because their birth certificates are not registered by their biological parents. Figure12 shows not all infants share the same fate when they are relinquished at the Korea's baby box. The fate of relinquished infant is separated from the moment the biological mother decides on the birth registration process. In a case of registration, relinquished infant can be placed for an adoption whereas, in a case of a nonregistered infant, the chance of being adopted is dim. There are about 800 children relinquished via baby box living in children's facilities. The number is estimated to increase up to 2000 in 2020. An extraordinary measure to safely accept these relinquished infants and place them in a care of a family is urgently needed.

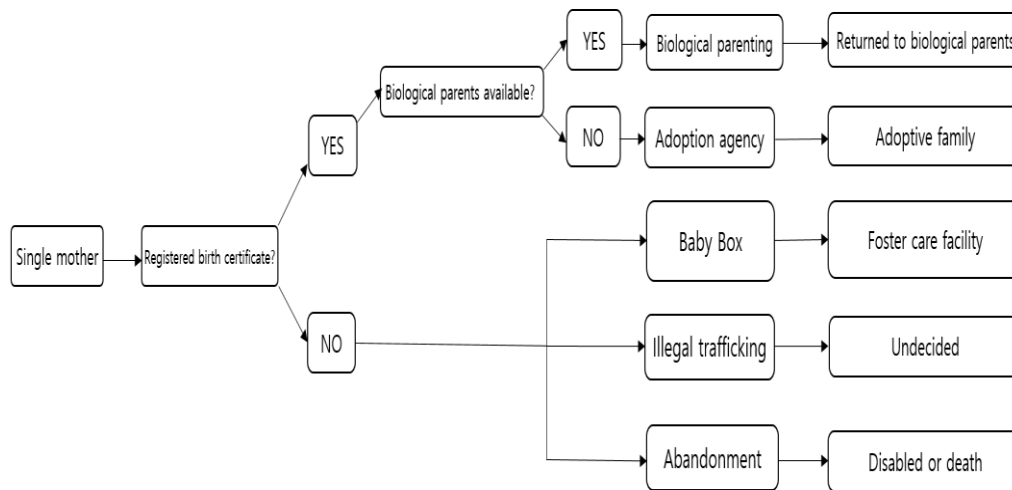


Figure 12. Birth Registrations' Effects on the Infant.

Beside moral responsibilities to find new homes for relinquished infants, the problems of low birth rate enlighten new perspective on unmarried mothers and their nonmarital births. Some argue that the low birth rate is caused by an increase in a number of people who postpone getting married or not getting married at all. The increase in a number of unmarried people may seem like it causes a low birth rate yet the statistics show otherwise. The crude marriage rate of Australia declined from 6.1 in 1995 to 5.4 in 2012 while the birth rate increased during the given period. Also, those who choose to postpone the marriage may give up pregnancies in order to avoid any obstetric complications related to delayed pregnancies but the postponement of marriage, again, does not always result in the low birth rate. For instance, the average age of first marriage of Swedish population increased from 27.2 in 1995 to 29.1 in 2012. The birth rate also increased from 1.74 to 1.91. According to findings of the

Korea Institute for Health and Social Affairs, the primiparous maternal age or the marriage rate does not have a significant relationship with the birth rate.²⁴⁷

Western countries show an increase in fertility rate despite the decrease in a number of marriage rates and prevalence of postponement of marriage. Such findings, therefore, highlight the importance of securing the increase in a number of nonmarital births. Nonmarital births or better known as extramarital births are described as childbirth of legally unmarried women. Often, the birth of cohabiting couples or unmarried pregnant women is represented as nonmarital births. From 1995 to 2012, England experienced the increased incidence of non-marital births from 33.5% to 47.6%. Because there was an increase in nonmarital births, there was also an increase in the fertility rate. The causal relationship between the non-marital births and fertility rate is also evident in Belgium. In 1995, the nonmarital births of Belgium were about 3.5%, however, in 2012, the prevalence increased up to 52.3% thereby increasing the fertility rate. Positive correlations shown in England and Belgium support the claim that there is indeed a significant association between the nonmarital birth rate and total fertility rate. In countries where there is a significantly increased proportion of live births outside of marriage, like France and Belgium, there is also a rise in total fertility rate. Countries like United Kingdom, Australia, and Germany which have been experiencing a decline in fertility rate are now recovering the fertility rate as there is an increase in nonmarital births. As previously stated, these countries are evolving from the conventional forms of

²⁴⁷ Yun-Jung Shin, "Oecd 국가의 저출산 현황 및 정책 동향," ed. Korean Institute for Health and Social Affairs (Seoul: Kim, Yong-Ha, 2009).

the family to a more diversified form of a family where child rearing as a single parent is more readily accepted than before. Along with the change, various benefits have been appeared to support the new type of a family.

Securing lives of children born out of wedlock are not only morally just but may be the new solution to low birth rate problem. Without the federal support, the increase in the number of relinquished infants will not subside on its own but problems associated with low birth rate will also not be alleviated. According to findings from Korea Institute for Health and Social Affairs, countries that have high fertility rate like France (2.02) and Sweden (1.91) have a high portion of GDP dedicated to family support while Korea only allocates only 0.3% of GDP in supporting families. The 0.3% of family support is marked beneath the OECD average and even lower than Mexico (1.0%) and Malta (0.9%) which are considered economically disadvantaged countries.²⁴⁸ Also, according to the same study, the childcare spending as a percentage of GDP was about 0.17%, a significantly lower than the OECD average. France, for example, spends about 1% of its GDP for childcare.

In addition to perceiving nonmarital births differently and bestowing federal support to unmarried women, a social prejudice on unmarried women needs to be abolished. Evident in comparative studies between western and eastern countries, for a long time, Koreans have considered a high number of nonmarital births existing in western countries to be a byproduct of an inappropriate conduct and only regarded childbirth within a marriage to be the

²⁴⁸ *Ibid.*

orthodox and the norm. Although incidences of premarital conception are increasing in younger generations, the orthodox views on marriage and births are still evident in many parts of Korean culture. In February of 2017, Korean Institute for Health and Social Affairs have published a forum proceedings posing an argument that the cause of the low birth rate lies in the decreased marriage rate which results from an increased educational level and social activities level of Korean women.²⁴⁹ The researcher further argued that in order to relieve low fertility rate problems, there should be a disadvantage on women seeking an “unnecessary” career build ups. Such claim led to the careless conclusion of decreasing the number of women in the workforce in order to increase the total fertility rate. The researcher was discharged three days later. If Korean society does not accept the change in family dynamics, the chance of recovering from fallen fertility rate is minuscule.

In the past, Germany experienced a sharp decline in total fertility rate. The rate dropped from 2.03 in 1970 to 1.05 by late 1970's and by 1995 Germany hit its lowest of 1.25 persons. However, starting in 2000, Germany has made a steady upward trend and recovered to what it was thirty years ago. From 2009, it shows a steady increase (Figure 13) while the marriage rate remained around an average of 4.7.²⁵⁰ In a recent forum entitled “Single moms are parents too: from abandonment to child-rearing, ” the explanations for the

²⁴⁹ Jongwook Won, " "주요 저출산대책의 성과와 향후 발전 방향" (paper presented at the 제 13차 인구포럼, Seoul, 2017).

²⁵⁰ Statistisches Bundesamt (2015).
<https://www.destatis.de/EN/FactsFigures/SocietyState/Population/Births/Tables/BirthDeaths.html> Accessed on 6/21/2017.

Germany's recovery was stated.²⁵¹ According to the researcher, the ample amount of resources available to nonmarital births and parenting was the groundwork for the recovery. After the appropriate resources have been allocated to the marginalized population of single parents, Germany started to show signs of recovery. Because there is limited data on a number of cohabiting couples residing in Korea, the introduction of PACS can be a hasty resolution to a serious problem. However, consideration of various supports for mothers regardless of their marital status is dire in need.

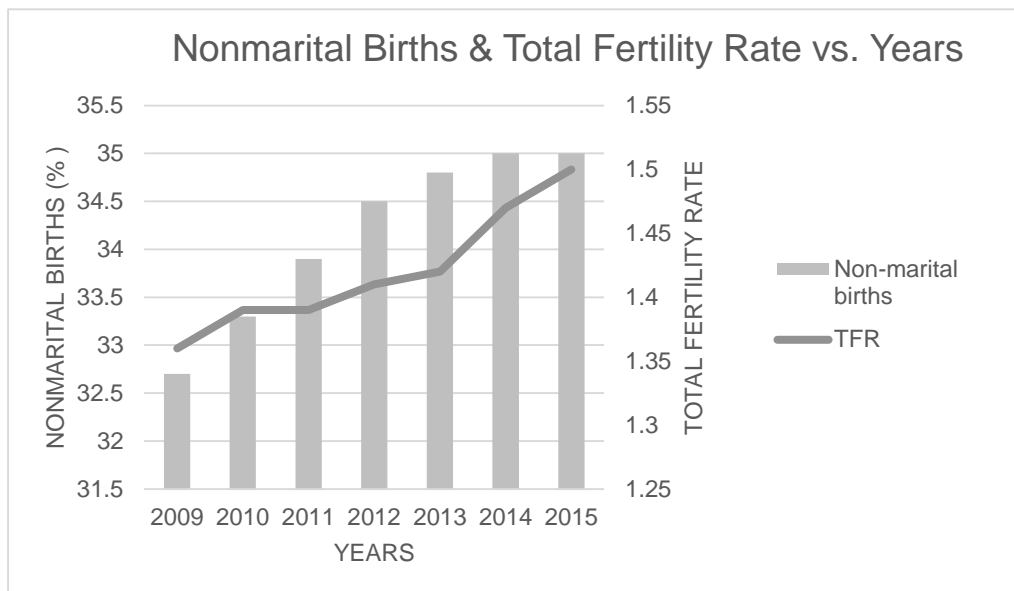


Figure 13. Nonmarital Births and Total Fertility Rate vs. Years

Source: Wordbank Data (2015)

²⁵¹ Shin.

There are other factors played in the abandonment process such as poverty, pregnancy denial, pregnant concealment, and violent sex crimes like rape. However, it is also historically evident that large portion of those who seek an alternative option that child rearing is unmarried women of varying ages. In response, the increase in a number of infanticides over the years has initiated the spread of modern foundling wheel, the baby box, to appear internationally. Each country now has a country-specific model that suits their social, cultural, socio-economical standards. France has long running Anonymous Birth Law where any pregnant women can deliver anonymously in a hospital and Germany has adopted Confidential Birth Law effective as 2014 which grants full anonymity of mother from the birth but still leaves room for a child to access the files if the child wishes and mother grants thereby making the confidential birth a sound alternative for the baby box. Korea, however, recently amended its Adoption Law (Special Adoption Law) putting an additional strain on unmarried women seeking alternative option than child rearing. Therefore, it is especially important for health care professionals in Korea to be the first responder to secure the life of the infant and provide adequate support for both child and mother. In addition, because the baby box fails to provide the medical support pregnant women needs during the delivery process, it is important to look beyond the current baby box system and find a suitable alternative solution for both parties with conflict of interests.

The ratification of the anonymous birth law and the subsequent reduction in reports of infanticidal acts during the period highlight that the Law has been a very effective tool in the prevention of infanticides in Austria.

Further research into infanticide and infant abandonment is necessary to accurately identify and implement a long-term solution such as confidential birth system into Korean society. Although all welfare systems are open to abuse, the society cannot stop evolving as it will serve an essential purpose to those who need them. Preventing the tragedy of child abandonment lies in better support for vulnerable women. Most of these women have had little or no prenatal care and leave hospitals without family support. So maternity service providers need to identify and provide special support options to women who appear at the time of birthing with little or no support and without prior prenatal care. Table 1 show that there is a maternal age difference among a married and unmarried group of mothers. In the single group, maternal age of below 20 years old was about 8.6% whereas it was only 0.3% in the married group. Although it is not presented in the table, 17.5% of adolescents under 20 years were nonmarital. The finding shows that the frequency of nonmarital birth among adolescents is rising because according to the study by Lim, nonmarital births were about 12.9% in Korea, 2003.²⁵² It is also evident from the demographic and birth-related characteristics of the 796,810 live births records analyzed by maternal marital status at the time of birth presented in Table 1 that more mothers give birth outside of hospital setting (0.9% vs. 1.6%), often receive high school or below education (24.7% vs 50.5%) and unemployed (61.2% vs. 66.6%) if single compared to the married group.

As shown in Table 2, the risk of delivery outside of a clinical setting is especially great for single group thus the society must bring the baby box into

²⁵² Lim.

the clinical setting. By offering anonymity via the confidential birth, it suggests a safer option than abandonment. International findings suggest that women who abandon their infants are not in a “normal” emotional condition to take the necessary steps to locate a baby box and safely relinquish their infants. Thus the delivery should take place in the clinical setting starting with the prenatal care. A volume of studies emphasizes the importance of prenatal care for all mothers but especially for these marginalized populations. Teen pregnancy, often associated with adverse birth outcomes, have been found to be more associated with the absence of prenatal care than because of young age.²⁵³ Young mothers of below 20 years old are 1.55 times more at risk for not receiving prenatal examinations than those above 20 years old, and such association is again reflected in the high percentage of adverse birth outcomes often seen in a group of young mothers.²⁵⁴ In the end, legislation needs to be changed; the confidential birth law must be instigated. Legislative change would be necessary to include exemptions in cases where babies are delivered anonymously at the hospital and are also granted with the right to know his biological origin once he turns a legal age. Also, an active clinical, financial, and psychosocial assistance must be first provided to parents who cannot afford to raise their children for any causes before considering the abolishment of the baby box largely because current unmarried mothers, who distrust current legislation, are perceiving the baby box as the only available option for them. In order to alleviate the predicament for each involved parties, extensive

²⁵³ Loto et al.

²⁵⁴ Gortzak-Uzan et al.

counseling should also be provided before passing on any moral judgment on nonmarital births. Healthcare professionals, including but not limited to doctors, nurses, health education teachers, and the perinatal educator, are in a position to play a significant role in public education that leads to the prevention of the infant abandonments. Also, considering the number of young unmarried mothers delivering in non-clinical setting, Germany's Confidential Birth Law needs to be actively evaluated along with the counseling and education to deliver most accurate information to teenagers in regards to contraception, stages in pregnancy, importance of prenatal care, birth, sex offences, availability of anonymous counseling and relinquishment, and most importantly the responsibility. The responsibilities of the biological father should be strictly reinforced. Social attitudes towards taking the responsibility of child support or even taking steps to exclude the proper amount of child support from acknowledged income source should be considered. Moreover, adolescent health education should include the importance of the male responsibility in pregnancy thereby teaching them the moral, societal, and legal responsibility as unmarried fathers.

Although the baby box currently provides a last resort for distressed unmarried women, an environment for unmarried mothers to raise their children without social prejudice is important. Until then, right to deliver anonymously via confidential birth should be considered a necessity in order to ensure the safety of life of both the mother and the infant at the hospital with the clinical supervision. By allowing women to legally deliver without disclosing their personal information, marginalized population of unmarried women would be

able to take advantage of counseling, prenatal care, and financial assistance throughout the course of pregnancy and during the delivery process. Also, when the biological mother decides to raise her child, she should be not only able to receive non-discriminated welfare benefits from the government but also from the biological father for the child support. If the mother, however, intends to give up her child for an adoption, the biological mother should be able to file non-disclosure by providing an alternate confidential file like the case of Germany, receive the counseling, and detailed information on the result of the process. Relinquished children would also be granted the right to file the claim on their biological origins once they turn certain legal age for the court to decide.

익명출산제도 및 미혼모 출생아 보호방안에 대한 고찰

역사적으로 관찰했을 때 영아유기는 새로운 일이 아니며 많은 나라들이 이미 적합한 대책 방안을 마련하여 시행하고 있음을 엿볼수있다. 하지만 우리나라는 최근에 들어서야 오랜 유교적 전통과 서양의 개방된 성 문화가 충돌함에 따라 또 적절한 성교육의 부재로 인해 혼외출산의 수가 급격히 늘어났고 그로 인해 버려지는 아동의 수도 함께 늘어났다. 이에 따라 ‘주사랑공동체’의 이종락 목사는 2009 년 12월 버려지는 유기 아동들의 생명을 살리고자 ‘베이비 박스’를 최초로 설립하였는데 그 수가 매 해 증가함에 따라 2012년부터 시행된 입양특례법으로 인해 유기되는 영아의 수가 늘어났다고 주장하는 의견을 살펴보았다. 우리나라에서는 혼인여부와 관계없이 여성이 임신과 출산을 하며 가족을 구성하는 것은 헌법 제 10조와 제 36조상 보장받는 기본권이지만 출산시 경제적 압박, 사회적 차별과 낙인으로 인하여 절박한 상황에 처한 여성이 아동유기를 하는 횟수가 늘어남에 따라 여성의 익명성과 아이의 뿌리를 알 권리가 서로 상충하는 것을 볼 수 있는데 현 시점의 베이비박스는 아동의 태생을 알 권리 및 모의 프라이버시권 및 자기결정권의 문제 또 국가의 미혼모 등에 대한 사회보장시스템의 결여 등 이해관계가 얽힌 난제들을 띄고있어 먼저 베이비 박스를 시행하였던 독일, 그리고 익명출산제도를 법으로 인정하고 있는 프랑스, 미국의 아기 피난소 법 그리고 일본의 베이비 박스 운영 및 실태 파악과 비교분석을 통해 우리나라에 맞는 영아유기에 대한 방안을 찾고자 한다. 또한 각 나라의 문화권이 다르기 때문에 역사, 정부의 개입, 그리고 의료진의 역할을 함께 살펴봄으로서 미혼모 출생아에대한 보호 방안으로

가장 적합한 것이 무엇인지 알아보았다. 분명한 것은 출생신고 제도가 강화된다고 해서 모든 아동에 대해 출생신고가 빠짐없이 이루어지는 것이 아니라 어떠한 이유에서든 출생신고를 할 수 없다고 스스로 판단하는 임신부들을 극단적인 상황으로 몰아갈 수 있다는 것이다. 입양특례법은 본래 아동의 권익 증진을 목적으로 시행되었지만, 역설적이게도 출생신고를 할 수 없는 비혼모들과 그 아기들을 낙태 또는 출산 후 유기라는 막다른 골목으로 몰아가고 있어 문제의 해결을 위해서 출생신고 제도만이 아니라 비혼모의 임신, 출산, 양육과 관련한 제도 전반의 개선과 보완이 필요하다. 비혼여성이 원치 않는 임신을 한 경우 극단적인 선택을 예방하기 위해 임신으로 인해 곤경에 처한 여성들을 임신 단계에서부터 익명으로 도울 수 있는 익명출산제도와 같은 각종 제도의 마련이 시급하며 베이비박스도 최후의 수단으로서의 역할을 할 뿐 최선의 선택이 아니듯 다양한 선제적 조치들이 이루어져야 한다고 주장하는 바이다.

주제어: 베이비박스, 유기아동, 영아유기, 미국입양제도, 익명출산, 독일출산제도

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